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W.P.Nos.8452 to 8454 of 2017 and 4628 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2024

DELIVERED ON : 03.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.8452 to 8454 of 2017 and 4628 of 2018

and

W.M.P.Nos.9252 to 9254 of 2017 and 5705 of 2018

W.P.Nos.8452 to 8454 of 2017:-

- | | |
|----------------|---|
| 1. C.Ravibalan | ...Petitioner in W.P.No.8452 of 2017 |
| 2. R.Mani | ...Petitioner in W.P.No.8453 of 2017 |
| 3. V.Murthi | ...Petitioner in W.P.No.8454 of 2017 |

-Vs-

1. The University Grants Commission,
represented by its Secretary,
Bahadursha Zafar Marg,
New Delhi.
2. The Medical Council of India,
represented by its Secretary,
Pocket-1 4, Sector-8,
Dwarka Phase – I,
New Delhi – 110077.
3. The Secretary,
Department of Health and Family Welfare,
Secretariat,
Fort St.George,
Chennai – 600 009.



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4. The Annamalai University,
represented by its Registrar,
Annamalai Nagar,
Chidambaram.
Cuddalore District.
5. The Dean,
Faculty of Dentistry,
Rajah Muthiah Dental College & Hospital,
Annamalai University,
Annamalai Nagar,
Chidambaram.
Cuddalore District.
6. The Dental Council of India,
represented by its Secretary,
Aiwane E Galib Marg,
Kotla Road, Temple Lane,
New Delhi – 110 002.
(R6 impleaded as per order
dated 26.04.2017 in
W.M.P.Nos.11494 to 11496 of 2017
in W.P.No.8452 to 8454 of 2017) ... Respondents

in W.P.Nos.8452 to 8454 of 2017

Prayer in W.P.No.8452 of 2017 : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the Impugned Memo issued by the 4th respondent in F.No.16753/K6/2016 dated 23.12.2016 and quash the same consequently direct the 4th respondent to refund the fees and other amounts of Rs.16,62,370/- paid for the petitioner's son R.Arun Mozhi at the time of admission and withdrawing admission from the 5th respondent College with interest to the petitioner.



W.P.Nos.8452 to 8454 of 2017 and 4628 of 2018

Prayer in W.P.No.8453 of 2017 : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the Impugned Memo issued by the 4th respondent in F.No.16753/K6/2016 dated 23.12.2016 and quash the same consequently direct the 4th respondent to refund the fees and other amounts of Rs.16,62,370/- paid for the petitioner's son M.Elamathy at the time of admission and withdrawing admission from the 5th respondent College with interest to the petitioner.

Prayer in W.P.No.8454 of 2017 : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the Impugned Memo issued by the 4th respondent in F.No.16753/K6/2016 dated 08.02.2017 and quash the same consequently direct the 4th respondent to refund the fees and other amounts of Rs.16,62,370/- paid for the petitioner's daughter M.Sathiya Priya at the time of admission and withdrawing admission from the 5th respondent College with interest to the petitioner.

W.P.No.4628 of 2018:-

R.Parvathi

...Petitioner

-Vs-

1. The University Grants Commission,
represented by its Secretary,
Bahadursha Zafar Marg,
New Delhi.
2. The Medical Council of India,
represented by its Secretary,
Pocket-1 4, Sector-8,
Dwarka Phase – I,
New Delhi – 110077.



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3. The Secretary,
Department of Health and Family Welfare,
Secretariat,
Fort St.George,
Chennai – 600 009.

4. The Annamalai University,
represented by its Registrar,
Annamalai Nagar,
Chidambaram.
Cuddalore District.

5. The Dean,
Faculty of Dentistry,
Rajah Muthiah Dental College & Hospital,
Annamalai University,
Annamalai Nagar,
Chidambaram.
Cuddalore District.

6. The Dental Council of India,
represented by its Secretary,
Aiwane E Galib Marg,
Kotla Road, Temple Lane,
New Delhi – 110 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the Impugned Memo issued by the 4th respondent in F.No.16753/K6/2016 dated 08.02.2017 and quash the same consequently direct the 4th respondent to refund the fees and other amounts of Rs.16,62,370/- paid for the petitioner's daughter R.Ramya at the time of admission and withdrawing admission from the 5th respondent College with interest to the petitioner.



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In all W.Ps

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For Petitioners : Mr.P.S.Amalraj

For R1 : Mr.P.R.Gopinath
Standing Counsel for UGC

For R2 : Mrs.Shubharanjini Ananth

For R3 : Mr.P.Kumaresan
Additional Advocate General
assisted by
Mrs.V.Yamuna Devi
Special Government Pleader

For R4 : Mr.S.Sithirai Anandam
Standing Counsel

For R6 : Mr.Haja Mohideen Gisthi

COMMON ORDER

These writ petitions have been filed challenging the order passed by the fourth respondent dated 23.12.2016 and 08.02.2017, thereby rejected the claim made by the wards of the respective petitioners for refund of tuition fees etc., which was paid at the time of admission to the course of BDS in the year 2016-2017.

2. The wards of the respective petitioners applied for the courses of MBBS and BDS in the fourth respondent University. The wards of the respective petitioners were called for counselling and on that date, they were selected and got admission in the fifth respondent College to the course of BDS



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for the year 2016-2017. They had paid the tuition fees, etc., for the first year.

Thereafter, they got admission to MBBS course in different Colleges.

Therefore, the wards of the respective petitioners made request to the fourth respondent to issue Transfer Certificates and other original documents which were received during their admission. However, the fourth respondent compelled the wards of the respective petitioners to pay the tuition fees for the entire course viz., II, III and IV years for BDS along with penalty. The wards of the respective petitioners had no other way than to deposit the amount to obtain Transfer Certificates, so that they can join in their MBBS course. They had paid the entire amount for the entire course and received the original certificates and Transfer Certificates. In fact, the said vacancies were also subsequently filled up by the fourth respondent. Even then, the fourth respondent refused to refund the fees which were paid by the wards of the respective petitioners. The wards of the respective petitioners had sent representations seeking refund of the fees. However, the fourth respondent rejected the request made by them by the orders impugned in these writ petitions.

3. The learned counsel appearing for the petitioners would submit that the fourth and fifth respondents are governed by the first respondent. The



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collection of entire fees for the entire course itself is against the guidelines and regulations of the first respondent. As per the public notice of the first respondent, the fourth respondent ought to have refunded the fees which were collected from the wards of the respective petitioners, after adjusting the proportionate deductions of monthly fee and proportionate hostel rent which are applicable. Immediately, after selection to the course of MBBS, the wards of the respective petitioners informed about their selection, even before 30.09.2016. Therefore, there was no delay on the part of the wards of the respective petitioners and no seats are lying vacant after discontinuing the course of BDS by the wards of the respective petitioners.

4. The fourth respondent filed counter and the learned Standing Counsel appearing for the fourth respondent submitted that the petitioners were admitted in the fifth respondent College in the month of July 2016. They had paid their first year fees and hostel fees. As per the prospectus which were issued during their admission, Clause 9.3, states as follows:-

i) The tuition fee and caution deposit will be refunded after deducting the service charge of Rs.10,000/-, if the candidate discontinues the programme before commencement of classes provided the resultant vacancy is filled up.



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ii) However, in case of candidate discontinues the programme on or after the date of commencement of classes and the resultant vacancy is filled up, caution deposit and 75% of tuition fee will be refunded.

iii) The candidate should pay the tuition fee for the entire duration of the programme, minus whatever has already been paid, if he/she discontinues the programme in the middle i.e., after close of admission and the resultant vacancy is not filled up.

Therefore any candidate discontinues the course after closer of the admission and such vacancy was lapsed, then that candidate is bound to pay entire course fee including the future Academic year. Further, they have to pay a sum of Rs.3,00,000/- as penalty in addition to forfeiture of tuition fees already paid.

5. He further submitted that the Dental Council of India extended the time for admission to the BDS course for the Academic Year 2016-2017, till 07.10.2016. The fourth respondent closed all the admissions prior to the cut off date and if any admission made after the cut off date is invalid. The wards of the respective petitioners submitted their letters with regard to their discontinuation of course only after the cut off date. Therefore, the fourth



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respondent collected the entire course fees as per the prospectus from the wards of the respective petitioners along with penalty. On collection of entire fees, all the original certificates and Transfer Certificates were returned to them. Therefore, without challenging the prospectus, they cannot seek refund of course fees, which is one of the conditions of admission. He further submitted that the fifth respondent College is a self supported College and the entire expenditure meet out by the College is only by collecting fees from the students. If any student discontinues their course without paying the fees, the burden will shift to other students by enhancing the fees structure for the future academic year.

6. He further submitted that the Rajah Muthiah Medical College attached to the fourth respondent was handed over to the Health and Family Welfare Department, for treating it as Government Medical College for Cuddalore District by the G.O.Ms.No.16 Higher Education (H1) Department dated 27.01.2021. Accordingly, the entire liabilities were also transferred, pending Liabilities as on 30.11.2020 including the payment to students is Rs.840.93 Crores. Therefore, the fourth respondent is not liable to refund any course fees.



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7. The first respondent filed counter and the learned Standing Counsel appearing for the first respondent submitted that the first respondent has been constituted under the provisions of the University Grants Commission Act, 1956 which came into force with effect from 05.11.1956. It was enacted to make provisions for the co-ordination and determination of standards in Universities. It has been entrusted with the duty to take such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities. Therefore, it is vested with the power to recommend to any University, the measures necessary for the improvement of University education and advice the Universities upon the action to be taken for the purpose of implementation of such recommendation.

8. While being so, the first respondent received several complaints against various Universities with regard to non-refund of fees and retention of original certificates of the students. Therefore, the first respondent issued a letter to all the Vice-Chancellors of all Universities in India, dated 11.01.2016 and directed the Universities to ensure the instructions issued by the first



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respondent. However, the first respondent received complaints from students/parents with regard to non-refund of fees and original certificates.

Therefore, the first respondent issued a notification of Remittance and Refund of fees and other student centric issues, on 06.12.2016. The relevant clause in the said notification reads as follows:-

“ 4.2 Remittance and Refund of Fees:

4.2.1. No HEIs (Higher Educational Institutions) shall make it mandatory for the applicants to purchase the Institutional prospectus any time during the course of Programme of study. Purchasing prospectus shall be the personal choice of the Student and he/she has all rights to decide against it in case, he/she wishes to access the information from Institutional website. As laid down in the Right to Information Act, 2005 and reiterated in the UGC guidelines on Students' Entitlement, all HEIs shall disclose on their website and prospectus information like the status of the Institution, its affiliation, accreditation rating, physical assets and amenities, course-wise sanctioned intake of students, details of faculty, membership of governing bodies and minutes of the meetings of bodies like Academic/Executive Council, sources of income and the Financial situation and any other information about its functioning necessary for a student to make a fully informed choice.

4.2.2: HEIs shall charge fees in advance only for the Semester/year in which a student is to engage in Academic activities. Collecting Advance Fees for entire programme of study or for more than one semester/year in which a student is enroll is strictly prohibited, as it restricts the student from exercising other options of enrollment elsewhere. This enabling provision is in line with the UGC Guideline on Choice-Based Credit System (CBCS) and model Curricula which are geared



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towards promoting a student's Inter-Institutional Mobility.

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4.2.3. If a student chooses to withdraw from the programme of study in which he/she is enrolled, the Institution concerned shall follow the following four-tier system for the refund of fees, remitted by the students.

Sl.No.	Percentage of Refund of Aggregate Fees	Point of time when notice of withdrawal of admission is served to HEI
(i)	100%	15 days before the formally notified last date of admission.
(ii)	80%	Not more than 15 days after the formally-notified last date of admission
(iii)	50%	More than 15 days but less than 30 days after formally-notified last date of admission
(iv)	00%	More than 30 days after formally-notified last date of admission.

** (Inclusive of course fees and non tuition fees but exclusive of caution money and security deposit)*

4.2.4: In case of (1) in the table above, the HEI concerned shall deduct an amount not more than 10% of the aggregate fees as processing charges from the refundable amount.

4.2.5 Fees shall be refunded by all the HEIs to an eligible student within 15 days fro the date of receiving a written application from him/her in this regard."

9. Further, the first respondent had issued a notification for adoption of Standard Operating Procedures (SOP) in the matters related to refund of fees, in the event of student's withdrawal from the programme and non-retention of Certificate at the time of Admission. The percentage of Refund of Fees is incorporated as hereunder:-



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Sl.No.	Percentage of Refund of Aggregate Fees	Point of time when notice of withdrawal of admission is served to HEI
(i)	100%	15 days before the formally notified last date of admission.
(ii)	90%	Less than 15 days before the formally- notified last date of admission
(iii)	80%	15 days or less after the formally-notified last date of admission
(iv)	50%	30 days are less, but more than 15 days, after formally-notified last date of admission.
(v)	00%	More than 30 days after formally-notified last date of admission.

10. The fourth respondent is stated to be an University and is mandate in law to follow the guidelines and regulations and other notifications issued by the first respondent from time to time under the University Grants Commission Act. The notification and guidelines issued by the first respondent are applicable to the Higher Educational Institutions including the fourth and fifth respondents. As per the notification dated 06.12.2016, they can collect fees in advance only for semester/year in which a student is to engage in academic activities. Collecting advance fees for entire course is strictly prohibited as it restricts the student from exercising other options of enrollment elsewhere.



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11. The learned counsel for the fourth respondent mainly relied upon the prospectus which were issued at the time of admission, in which Clause 9.3, states as follows:-

i) The tuition fee and caution deposit will be refunded after deducting the service charge of Rs.10,000/-, if the candidate discontinues the programme before commencement of classes provided the resultant vacancy is filled up.

ii) However, in case of candidate discontinues the programme on or after the date of commencement of classes and the resultant vacancy is filled up, caution deposit and 75% of tuition fee will be refunded.

iii) The candidate should pay the tuition fee for the entire duration of the programme, minus whatever has already been paid, if he/she discontinues the programme in the middle i.e., after close of admission and the resultant vacancy is not filled up.

Accordingly, if a candidate discontinues the course after the cut off date, the candidate should pay the tuition fees for the entire duration of the programme, deducting the fees which was already paid by the candidate.

12. However, the guidelines and regulations issued by the first respondent prevails the prospectus issued by the fourth respondent, since it is



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against the regulations issued by the first respondent. Therefore, the fourth and fifth respondents should not have collected fees for the entire course/programme for BDS. The collection of fees for the entire course is a clear violation of regulation issued by the first respondent. The wards of the respective petitioners paid the fees for the entire course only on compulsion and if not paid, their original certificates and Transfer Certificates would not be issued. Therefore, the wards of the respective petitioners had paid the fees for the entire course. Further, the guidelines and regulations of the first respondent are binding on the fourth and fifth respondents and they cannot claim that they are not bound by norms fixed by the first respondent.

13. It is also reiterated by the Hon'ble Division Bench of this Court reported in **2023 1 LW 410**, in the case of ***University Grants Commission, represented by its Secretary and Another Vs. Annamalai University, represented by its Registrar and others***, in which this Court held as follows:-

“63. In fine, we conclude that the University Grants Commission Regulations will prevail in view of the primacy given to the University Grants Commission under the University Grants Commission Act as well as the Entry 66 of List 1 of the 7th Schedule of the Constitution.”



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14. Therefore, the fourth and fifth respondents cannot retain the fees which were collected for the entire course. Further, though all the wards of the respective petitioners informed even before the cut off date viz., 30.09.2016 about their selection to the MBBS Course, they were not issued Transfer Certificates. They were compelled to pay the fees for the entire course and then only they were issued original certificates and Transfer Certificates which were submitted at the time of their admission. If at all there was any delay, due to which the vacancies arose on the petitioners' respective wards' discontinuation from their respective courses, it is not on the fault of the petitioners' wards. It is only on the fault of the fourth and fifth respondents. Therefore, the fourth and fifth respondents cannot retain the fees which were collected for the entire course.

15. In view of the above, the impugned orders cannot be sustained and are liable to be quashed. Accordingly, the Impugned Memos issued by the 4th respondent in F.No.16753/K6/2016 dated 23.12.2016 and 08.02.2017 are hereby quashed. The fourth respondent is directed to refund the fees and other amounts if any which were collected for the entire course at the time of admission and withdrawal of admission from the fifth respondent College after



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deducting the permitted amount as per the guidelines and regulations issued by the first respondent, within a period of four weeks from the date of receipt of a copy of this order.

16. Accordingly, these writ petitions are allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

03.06.2024

Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order
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To

1. The Secretary,
The University Grants Commission,
Bahadursha Zafar Marg,
New Delhi.
2. The Secretary,
The Medical Council of India,
Pocket-1 4, Sector-8,
Dwarka Phase – I,
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G.K.ILANTHIRAIYAN. J.

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Annamalai Nagar,
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Rajah Muthiah Dental College & Hospital,
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Pre-Delivery order made in
W.P.Nos.8452 to 8454 of 2017 and 4628 of 2018

03.06.2024