

W.P(MD).No. 20795 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2023

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P(MD)No.20795 of 2016

Dr.R.Hemamalini
M/o.M.H.Anupritha
Arudhra Hamshadhwanaa
(Former 1st M.B.B.S. Student
RMMC Annamalai University)



..... Petitioner

- Vs-

The Registrar,
Annamalai University,
Chidambaram.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to take appropriate steps by considering the representation given by the petitioner dated 30.09.2016, within the period stipulated by this Court.

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For Petitioner : Mr.S.Venkatasubramaniyan

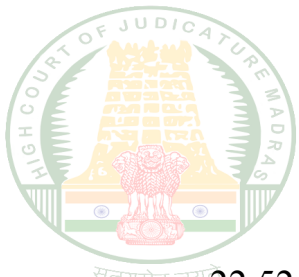
For Respondent : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

ORDER

The present Writ Petition has been filed seeking for a Mandamus to direct the respondent to take appropriate action by considering the representation given by the petitioner, dated 30.09.2016, within the stipulated time.

2. The case of the petitioner is that the petitioner's daughter had joined the respondent College. The petitioner's daughter was provisionally selected in the respondent Institution and she had joined the respondent University in MBBS Course in August 2016. Thereafter, the petitioner's daughter had obtained an admission in Velammal Medical College, Madurai and therefore, she had made a request to relieve the petitioner's daughter from the respondent Institution. The petitioner was directed to pay the remaining fees for the entire Course and that she had paid a sum of Rs.

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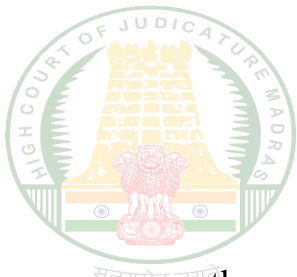
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22,52,000/- (Rupees Twenty Two Lakhs and Fifty Two Thousand only)
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towards the same and only thereafter, the petitioner's daughter was issued with the Transfer Certificate by the respondent Institution. The petitioner was forced to sign a Bond as dictated by the respondent institution in their Prospectus for seeking admission and since there was no other choice to get admission to the petitioner has executed the same. Thereafter, in December 2016, the respondent Institution refunded a sum of Rs.17,50,000/- (Rupees Seventeen Lakhs Fifty Thousand only). They have not refunded the first year Tuition fees, namely, Rs.5,54,370/- (Rupees Five Lakhs Fifty Four Thousand Three Hundred and Seventy only) and Rs.5,00,000/- (Rupees Five Lakhs only) towards bond breakage fees. The said action of the respondent institution is contrary to the UGC Regulation.

3. The learned counsel for the petitioner would rely upon the Circular issued by the University Grant Commission, dated 23.04.2007 to contend that the respondent institution does not have an authority to retain any fees that they have been collected from the petitioner's daughter, since the vacancy that had arisen due to the reason of the petitioner's daughter leaving

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the respondent institution has been filled up by another candidate.

According to him, what could be retained by them is a proportionate fees for the period in which the petitioner's daughter studied in the College.

4. The learned counsel for the petitioner would also rely upon further Circular, dated 22.06.2011, wherein, the UGC has reiterated the said guidelines. He would also rely upon the Judgment of this Court made in W.P.No.5559 of 2016, dated 18.07.2016 (***Dr.Major K.Kamalanathan -Vs- University Grants Commission and three others***) to seek refund of the fees paid by the petitioner. He would also bring to the notice of this Court further notification issued by the UGC on the refund and the retention of the original Certificates, in October 2018. Therefore, he would contend that the retention of money by the respondent Institution is contrary to the UGC Regulation and therefore he would plead that this Court to issue a Mandamus as prayed for.

5. Countering the arguments, the learned Counsel appearing for the respondent Institution would submit that the Prospectus issued by the



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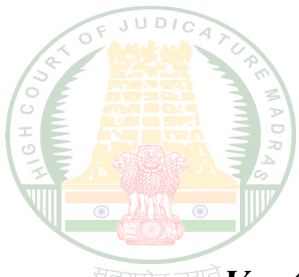
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respondent Institution for the admission made during the year 2016-2017 is binding on the petitioner and they cannot violate the same.

6. According to the said Prospectus, the petitioner is bound to issue a bond and that if any student vacated after July 2016, the student is bound to comply with the bond and pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) in the respondent Institution for bond breakage. He would also submit that since the petitioner had left the Course in the mid stream, they are entitled to hold the fees for the said academic year.

7. Relying upon the counter filed by the respondent, he would further contend that as per the Resolution No. 44, dated 01.11.2016, which came into force from the academic year 2016-2017, the respondent University are fully entitled to retain the amount deducted from the petitioner and therefore, the claim of the petitioner need not be entertained.

8. In support of his contention, he would rely upon the judgment of this Court in W.P.No.7582 of 2020, dated 28.07.2020 (**Dr.A.Dhanasekaran**



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-Vs- the State of Tamil Nadu, Represented by its Principal Secretary to Government, Health and Family Welfare Department and two others) to

contend that the Prospectus issued by the Institution is binding on the respective students who joined the Course based on the Prospectus for the academic year and since the petitioner had joined the institution based upon the Prospectus issued by the respondent institution, the petitioner cannot claim that such Bond is not binding on them. He would also further rely upon the another judgment of this Court made in W.P.No.12923 of 2008 etc., batch cases, dated 12.12.2008, (***Dr.S.Rajesh -vs- the State of Tamil Nadu, represented by its Secretary, Health and Family Welfare Department and four others)*** to contend that the Bond has been executed by the candidate pursuant to the condition in the Prospectus. A candidate cannot challenge such a clause in the Bond. Hence, he would submit that the petitioner is bound by Clause 17(1) of the Prospectus.

9. I have considered the rival submissions made by the learned Counsel appearing on either side.

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10. It is the admitted case that the petitioner's daughter was admitted in the respondent institution in August 2016 and she had left the Institution in September 2016. The only dispute is, what is the liability of the petitioner's daughter and what is the right of the respondent Institution to retain the money. It is the admitted case that the petitioner had paid a sum of Rs.5,54,370/- (Rupees Five Lakhs Fifty Four Thousand Three Hundred and Seventy only) on 11.07.2016 and Rs.22,50,000/- (Rupees Twenty Two Lakhs and Fifty Thousand only) on 27.09.2016, on which date, the respondent Institution had returned the original Certificates. But, however, based upon the subsequent request of the petitioner, the respondent Institution had released a sum of Rs.17,50,000/- (Rupees Seventeen Lakhs and Fifty Thousand only) pending this Writ Petition.

11. The claim of the respondent Institution is that they are entitled to retain the first year fees that has been paid by the petitioner's daughter, as she had left the Course midway and the further claim that they are entitled to retain a sum of Rs.5,00,000/- (Rupees Five Lakhs only), is pursuant to Clause 17(5) of the Prospectus. Hence, the respondent Institution had

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retained the amount claimed by the petitioner's daughter under Clause 2(H) paid for the first year Course.

12. Even as per the Counter, pursuant to vacating the seat by the petitioner's daughter the same has been filled up with the fresh candidates by the University. It is useful, now to look at the Circular issued by the University Grants Commission, dated 23.04.2007. Paragraph No.3 is extracted hereunder:

“3. The Ministry of Human Resource Development and University Grants Commission have considered the issue and decided that the Institutions and Universities, In the public interest, shall maintain a waiting list of students/ candidates. In the event of a student / candidate withdrawing before the starting of the Course, the waitlisted candidates should be given admission against the vacant seat. The entire fee collected from the student, after a deduction of the processing fee of not more than Rs.1000/- (Rupees One Thousand only) shall be refunded and returned by the Institution/University to the student/ candidate withdrawing from the programme. Should a student



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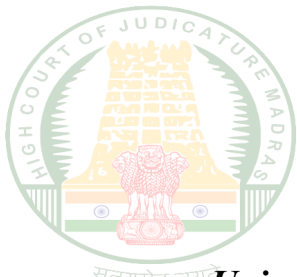
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leave after joining the Course and if the seat consequently falling vacant has been filled by another candidate by the last date of admission, the Institution must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, where applicable”.

13. A reading of the public notice issued by the UGC, it is clear that if the students leave the Institution after joining the Course and if the seat consequently falling vacant has been filled by another candidate, before the last date of admission, the Institution should return the fees collected with proportionate deductions of monthly fees and proportionate hostel rent, where applicable.

14. The UGC guidelines, it is binding on the Institution and they cannot claim that they are not bound by the norms fixed by the UGC. This position has been reiterated by the Hon'ble Division Bench of this Court in the case of the ***University Grants Commission***, represented by its ***the Secretary, Bahada Shah Zafar Marg, New Delhi – 110 002 and another Vs- Annamalai University, represented by its Registrar, Annamalai***

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University, Chidambaram – 608 002 and others reported in **2023-1-L.W.**

15. Hence, what the respondent Institution can retain from the first year fees collected from the petitioner's daughter could be the fees for the period of two months viz., August 2016 to September 2016 which shall be deducted proportionately from the fees collected for the first year namely, Rs.5,54,000/- (Rupees Five Lakhs and Fifty Four Thousand only).

16. It is also seen from the Prospectus of the institution in Clause 9.3 where the general instructions have been issued. The relevant clauses 9.3. 1, 2, 3, as under:

9.3 General Instructions for Applicants.

(i) The tuition fee and the 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 a candidate discontinues the programme on or after the date of



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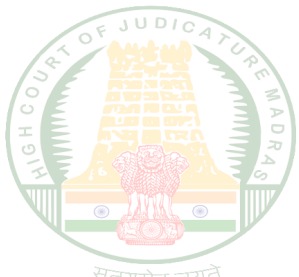
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commencement of classes and the resultant vacancy is filled up, caution deposit and 75% of tuition fee will be refunded.

(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.

17. Even as per the institution Prospectus, when the student 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 would be refunded. Even according to this clause, the respondent Institution is not entitled to hold back the entire tuition fee for the first academic year. The said clause is also in violation of the public notice issued by the UGC.

18. As regards the quashing the second head which the respondent Institution claims to retain Rs.5,00,000/- (Rupees Five Lakhs only), based



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upon the Prospectus of the institution in Clause 7.15, it is extracted
hereunder:

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7.15 Bond:

(i) Candidates selected for admission and his/her Parent/Guardian will have to execute an Agreement Bond during admission to college as prescribed in Annexure II. Failure to execute the Agreement Bond will lead to cancellation of Selection.

(ii) Candidates who discontinue the Course between July, 2016 are bound by the bond and thereby they shall have to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) as penalty for having breached the contract in the bond and the candidates who discontinue the course on or after July, 2016 and in any date of the Subsequent years shall have to pay a sum of Rs. 5,00,000/- (Rupees Five Lakhs only) as penalty in addition to forfeiture of tuition and other fees as stated in item No.9.3 of the prospectus.



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19. According to the said clause, if the candidates discontinue the Course on or after July, 2016, they will have to pay a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) in addition to forfeiture of tuition and other fees as stated in Clause No.9.3 of the Prospectus.

20. I have also been taken through the Bond Agreement format of the agreement which the parent has to give. In my view, such a clause is in violation of the judgments of the Hon'ble Apex Court reported in the case of ***T.M.A. Pai foundation and others vs- State of Karnataka and others*** reported in ***(2002)8 Supreme Court Cases 481***, wherein it has been repeatedly held by the Hon'ble Apex Court and the same has been reiterated by this Court that any Institution cannot collect more than what they are permitted, namely, tuition fees and other institutional expenditure. Further, in the present case on hand, the Institution had admitted another student in the vacancy that had arisen due to the petitioner's daughter leaving the Institution. There is no loss that is caused to the institution. What the institution now seeks to achieve, in my view, is an unjust enrichment amounting to profiteering, which it has been heavily come down by the



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Hon'ble Apex Court, in the judgment referred to supra. In view of that, I hold that clause 7.15 is illegal and therefore, will not be binding on the petitioner in this case. In so far as the reliance laid by the learned Counsel for the respondent upon the judgment of this Court that the clauses referred to in those cases are all valid and binding. I respectfully hold that the judgments will not be binding in respect of this Writ Petition.

21. Hence, this Writ Petition is allowed and there shall be a direction to the respondent Institution to refund the balance of Rs.10,54,000/- (Rupees Ten Lakhs and Fifty Four Thousand only) held by them after deducting proportionate tuition fee for the period, August 2016 to September 2016 within a period of twelve (12) weeks from the date receipt of a copy of this order. There shall be no order as to costs.

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NCC: Yes / No
Index : Yes / No
Internet : Yes / No
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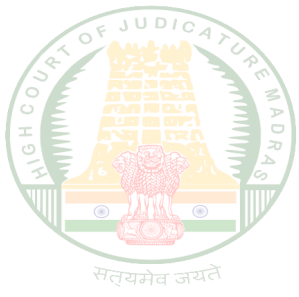
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To
The Registrar,
Annamalai University,
Chidambaram.



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K.KUMARESH BABU, J.

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Order made in
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