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W.P.(MD)NO.14681 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 01.08.2024**

**Pronounced on : 05.08.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P.(MD)No.14681 of 2024**

N.Thillai Mathiyarasi

... Petitioner

Vs.

- 1.The State of Tamil Nadu,  
Represented by its Principal Secretary,  
Health and Family Welfare Department,  
Secretariat, Chennai – 600 009.
- 2.The Directorate of Medical Education and Research,  
Represented by the Director of Medical Education,  
Kilpauk, Chennai – 600 010.
- 3.The Directorate of Public Health and Preventive Medicine,  
Represented by its Director of Public Health and Preventive Medicine,  
359, Annal Salai, Chennai – 600 006.
- 4.Chengalpattu Medical College Hospital,  
Represented by its Dean,  
Chengalpattu District.
- 5.The Joint Director of Health Services,  
Ramanathapuram District.
- 6.The Chief Medical Officer,  
Government Hospital Rameswaram,  
Ramanathapuram District.
- 7.Directorate of Medical and Rural Health Service,  
Represented by its Director,  
Chennai – 600 006.

... Respondents



**Prayer:** Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent Nos.1 to 7 to treat the petitioner's compulsory bond period as completed in line with the service rendered during the Covid – 19 period and to consequently relieve the petitioner from his bonded service also to direct the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents to return the petitioner's original certificates and documents collected by the 2<sup>nd</sup> and 4<sup>th</sup> respondents while admitting the petitioner to the Post Graduate degree course along with his post Graduate degree certificate within a time frame to be fixed by this Court.

For Petitioner : Mr.R.Raghev

For Respondents : Mrs.M.Sneha,  
Standing Counsel for R2 & R3.  
Mr.M.Sarangan,  
Addl. Govt. Pleader for R1, R4 to R8.

\* \* \*

### **ORDER**

Ragas (patterns of melody) have been pledged. The following accounts recount two such instances:

*“An interesting story has been told of Todi Sitaramiah who was a court musician in Thanjavur in Tamil Nadu. He was a great favourite of the king; his rendering the raga Todi was considered to be unrivalled. Sitaramiah was a spendthrift and in spite of all the favour showered on him by the king he was always in want. Once he was badly in need of money. He had*



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*pledged all his belongings for various debts incurred by him and so he could not again approach his creditors for money.*

*There was a money lender in Thanjavur who was somewhat like a Shylock and so people went to him as the last resource. Sitaramiah had to go to him for a loan. The moneylender offered to give him the loan on a suitable security. Sitaramiah pleaded that he pledged all his properties and there was nothing left over to pledge as security. The shrewd moneylender had a brain wave. The moneylender's eyes twinkled and said, " Your Todi Raga is still yours; you may pledge it and take the loan, and when you return the loan you can have it back".*

*Sitaramiah was nonplussed, but he had no choice and so pledged his Todi raga and got the loan. One day the king asked him to sing Todi raga for which he was hungering. Sitaramiah was in a fix; he was gulping in his throat and wringing his hands. On the king's demanding an explanation the truth came out. The king appreciated the shrewdness of the moneylender; cleared the loan taken by Sitaramiah and redeemed his favourite Todi Raga."*

[\(https://tamilandvedas.com/2014/05/30/musician-who-pledged-a-raga/\)](https://tamilandvedas.com/2014/05/30/musician-who-pledged-a-raga/)

*Sankarabharanam became synonymous with Narasaiyar's name after King Serfoji, moved by the musician's rendition of the raga, conferred on him the title Sankarabharanam Narasaiyar. Tamil Thatha U. Ve. Swaminatha*



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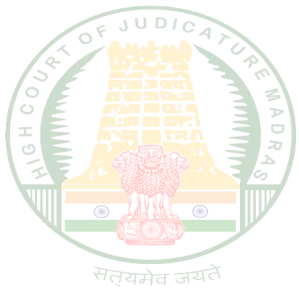
*Iyer, who was also trained in classical music, has recorded the incident in one of his articles, which will find a place in the four-volume collection being brought out by noted publishers Kalachuvadu.*

*The story, as narrated by U.Ve.Sa, goes that when Narasaiyar was badly in need of money, he approached Ramabadra Moopanar, one of the forefathers of former Union Minister and TMC leader G.K. Vasan.*

*“He stayed as a guest of Moopanar at his bungalow in Kapistalam. After two days, Narasaiyar slowly broached the topic and asked for 80 gold coins. When Moopanar wondered what Narasaiyar had to offer in return, the musician responded hesitantly that the only abaranam in his possession was Sankarabharanam. So, he promised not to sing Sankarabharanam till he returned the money,” says Swaminatha Iyer, though the source is not clear.*

*Narasaiyar kept the promise for long, but he came under pressure to sing the raga at a wedding in the family of Kumbakonam Appurayar, a British government employee and a close friend of British official Wallis.*

*When Narasaiyar expressed his helplessness because of the ‘hypothecation’ of the raga, Appurayar sent a messenger with money to Kapistalam to redeem the raga. Moopanar not only returned the agreement signed between him and Narasaiyar, but also rushed to Kumbakonam to meet Appurayar.*



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*He gave more money to Narasaiyar and requested everyone to forget the incident, saying he had done so only for fun.*

*“I would have happily given the money Narasaiyar asked for. He was so close to me that I was a little upset when he wanted to borrow from me. What is the use of money if we are not able to help great artistes,” Swamintha Iyer records Moopananar as saying.*

*The next day, Narasaiyar captivated the audience with his Sankarabharanam and also went on to become the court musician of Appurayar. The honour in King Serfoji’s court followed suit. ”*

*“Courtesy B.Kolappan article in The Hindu dated December 01, 2015.”*

2.Can educational certificates be likewise pledged? Can there be exercise of the right of lien on them? I thought I have answered this issue in the negative in scores of cases. In fact, sitting in Division Bench, I had reiterated the same view (W.A.Nos.2256 of 2022 etc dated 06.10.2022). The need for a fresh discussion has arisen since Ms.M.Sneha, the learned Special Counsel for Health and Family Welfare Department has argued that this runs counter to the judgment of the Hon'ble Division Bench in W.A.Nos.799 of 2019 etc dated 06.10.2020.



3. Before I answer the issue, let me run through the facts. The writ

petitioner after graduating in MBBS applied for a seat in M.D. (Paed) course. She was given admission in Chengalpattu Medical College Hospital. At the time of admission, the petitioner executed a bond undertaking to serve the State of Tamil Nadu for two years after completion of the course. In the event of failure to honour the undertaking, the petitioner was liable to pay a sum of Rs.40 Lakhs towards liquidated damages. Later, the bond period was reduced to one year and the quantum of the damages to Rs.20 Lakhs.

4. The petitioner as a P.G. student had rendered what is known as “covid duty”. She wants it to be treated as bond service. She relies on the certificate issued by the fourth respondent. Ms.M.Sneha contends that this certificate was issued for the purpose of availing incentive marks in the recruitment process being conducted by MRB for the post of Assistant Surgeon. Vide order dated 25.04.2024 in W.P.(MD)No.9953 of 2024 (Dr.Yedupati Kondala Rao Vs. The State of, represented by the Principal Secretary, Health and Family Welfare Department, Chennai) after referring to the earlier orders passed by Madras High Court, I concluded that the overwhelming weight of authority in the light of the



order passed by the Hon'ble First Bench in W.P.No.25827 of 2023 dated

16.11.2023, is to the effect that covid duty performed by the P.G. students shall be treated as bond service. Having held so, the question of going into the purpose of issuance of certificate need not be gone into. I however refrain from going into the factual aspects. It is only the fourth respondent who can certify the period for which the petitioner rendered covid duty. The learned counsel for the respondents points out that the certificate relied on by the petitioner makes it appear as if the petitioner has done covid duty upto 15.05.2023. Of-course, this is improbable. It is for this reason, I leave it to the fourth respondent to re-visit the issue and determine the actual period for which the petitioner carried out covid duty.

5.Let me go back to the primary issue. Can there be lien on the petitioner's certificates? Lien has been defined in P.Ramanatha Aiyar's Advanced Law Lexicon as “a right to retain possession of goods owned by another person”. No doubt, the Hon'ble First Bench in W.A.Nos.799 of 2019 etc batch dated 06.10.2020 had held as follows:-

*“89. We may point out that the Apex Court in the case of Anand S. Biji v. State of Kerala. (supra) had clarified the issue with regard to a precondition being imposed in respect of*



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*eligibility. In our opinion, the execution of the bonds and the retention of certificates are not exactly an eligibility condition, but are rather a condition imposed keeping in view the highly subsidized rate of education being imparted, coupled with the duty of such candidates to serve the interest of the State itself.*

*91. With regard to the argument of the equality clause being violated by the Government by release of some certificates, suffice it to say that they were based on directions issued or judgments of this Court. The question of applying the said law by invoking the equality clause would be perpetuating an illegal position in the light of the judgment of the Apex Court in Association of Medical Superspeciality Aspirants and Residents and others (supra).*

*93. This argument has to be rejected, in as much as it is true that Regulations of the University Grants Commission on Educational Institutions are binding, but in the present case, the matter would be governed by such Regulations and Rules that pertain to medical education specifically. The lien on certificates in the present case is an outcome of a voluntary contract between the candidate and the State and the Medical College, where the retention is only for a limited purpose to ensure that the candidate after passing out serves the interest of the State for the period indicated in the bond. As to what is the nature of the contract or bailment need not be necessarily gone into, as that has neither been debated, nor it would be now relevant to decide, as such conditions of retention have been voluntarily accepted and authorized by the petitioners*





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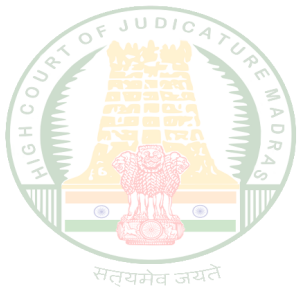


*and have been held to be constitutionally permissible by a detailed enunciation of law by the Apex Court referred to herein above. To reiterate, the said issue now stands foreclosed on principles of estoppel by conduct and acquiescence and with the pronouncement of the Apex Court. They cannot be questioned by the petitioners any longer.”*

Since the Hon'ble First Bench had referred to and relied on the decision of the Hon'ble Supreme Court reported in **(2019) 8 SCC 607 (Association of Medical Superspeciality Aspirants and Residents Vs. Union of India)**, I called upon the learned counsel for the respondents to draw my attention to that portion of that judgment holding that educational certificates can be retained. I place on record that the vigorous search made by the learned counsel did not yield any result.

6.The Hon'ble Supreme Court had already settled the issue in **(2000) 7 SCC 264 (R.D.Saxena vs Balram Prasad Sharma)** in the following terms:-

*“40. This Court in Union of India and Anr. v. Delhi Cloth and General Mills Co. Ltd. held that to become "goods" an article must be something which can ordinarily come to the markets to be bought and sold. In Collector of Central Excise, Calcutta-I v. Eastend Paper Industries Ltd.m it was stated that*



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*goods are understood to mean as identifiable articles known in the markets as goods and marketed and marketable in the market as such. Where the Act does not define "goods", the Legislature should be presumed to have used that word in its ordinary dictionary meaning i.e. to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market as such."*

7.A learned Single Judge of this Court in ***A. John Paul Vs. State of Tamil Nadu (2012) 4 CTC 826*** noted that as per Section 6(d) of the Transfer of Property Act, 1882, that all interest in property restricted in its enjoyment to the owner personally cannot be transferred by him. That was a case involving an agreement between an employee and the management. It was held that notwithstanding the agreement, the educational certificates cannot be retained. It was specifically held that the Certificates, Mark Sheets, Conduct Certificate are all properties which cannot be transferred at all. By means of an agreement, the property which is transferable alone can be transferred. Even by means of an agreement a property which cannot be transferred cannot be a subject of transfer under the guise of the agreement. It is further observed that if there be a term in the agreement to the contrary, it was void without even requiring an adjudication from Court.

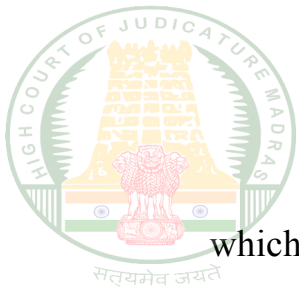


WEB COPY 8. In *S.Muthukamatchi Vs. The Director of Technical Education, Anna University [2013 (1) CTC 595]*, it was held that the educational certificates cannot be retained at any rate.

9. The right of lien has been set out in Sections 170, 171 and 221 of the Indian Contract Act, 1872. Section 170 talks about Bailee's particular lien. Section 221 states that Agent has lien on the principal's property under certain circumstances. Obviously, the respondents are neither “bailees” nor “agents”. That leaves us with Section 171. It reads as follows:-

*“171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.—Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.”*

The stand of the respondents is that since there is an express contract providing for lien, they are entitled to retain the certificates of the petitioner. This argument overlooks a fundamental element. Section 171

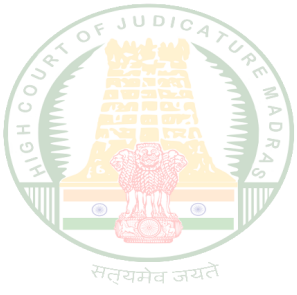


which can be the only source of the right of lien makes abundantly clear that this right can be exercised only on goods. R.D.Saxena had already authoritatively laid down what can be characterized as goods. The defence of the respondents fails the Saxena test.

10. By not following the decision of the Hon'ble First Bench, am I breaching judicial discipline? Article 141 of the Constitution of India declares that the law laid down by the Hon'ble Supreme Court is the law of the land. The Hon'ble First Bench judgment relied on by the respondents does not refer to R.D.Saxena. Quoting **Robert Frost** may not be inappropriate in this context:

*“Two roads diverged in a yellow wood,  
And sorry I could not travel both  
And be one traveler, long I stood  
And looked down one as far as I could  
To where it bent in the undergrowth;  
  
Then took the other, as just as fair,  
And having perhaps the better claim,  
.....”*

I am in no frostian dilemma. R.D.Saxena has not just a better claim but the only claim.



**WEB COPY** 11.I hold that the respondents cannot exercise the right of lien over the petitioner's educational certificates. The fourth respondent is directed to return the petitioner's original certificates forthwith and without delay. The second respondent is directed to formally relieve the petitioner from the bonded service. This shall be done within a period of four weeks from the date of receipt of a copy of this order.

12.The writ petition is allowed on these terms. No costs.

**05.08.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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**To:**

- 1.The Principal Secretary,  
Health and Family Welfare Department,  
Secretariat, Chennai – 600 009.
- 3.The Dean,  
Chengalpattu Medical College Hospital,  
Chengalpattu District.
- 4.The Joint Director of Health Services,  
Ramanathapuram District.



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5. The Chief Medical Officer,  
Government Hospital Rameswaram,  
Ramanathapuram District.

6. The Director,  
Directorate of Medical and Rural Health Service,  
Chennai – 600 006.



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**G.R.SWAMINATHAN, J.**

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**Pre-Delivery Order in**  
**W.P.(MD)No.14681 of 2024**

**05.08.2024**