

**W.P.(C) No. 20027 of 2020**

**Dipesh Ku. Padhihari**

**... Petitioner**

**Versus**

**Hi-Tech Medical College & Hospital and Others ... Opp. Parties**

05. 16.09.2020            In view of extraordinary situation arose out of COVID-19 lockdown, the matter is taken up through video conferencing.

The petitioner has sought for a direction to the Opp. Parties to return all his original documents (i.e. original High School Certificate, and mark sheet, Council of Higher Secondary examination certificate and mark sheet, M.B.B.S mark-sheets, Internship completion certificate, College leaving Certificate, Conduct Certificate, OCMR registration certificate) submitted by him at the time of admission in P.G. course in the Hi-Tech Medical College & Hospital and issuance of the P.G. certificate, P.G. Mark sheet, P.G. College Leaving Certificate and P.G. Conduct Certificate to enable him to submit those documents at his new place of posting.

The facts of the case is that the petitioner was pursuing his studies in P.G. course at Hi-Tech Medical College & Hospital and has passed the M.S.(General Surgery) Examination 2020 in the month of May, 2020. It is stated that at the time of taking admission in the Hi-Tech Medical College in P.G. course, the petitioner was asked to submit the original High School Certificate and mark sheet, Council of Higher Secondary examination certificate and mark sheet, M.B.B.S mark-sheets, Internship completion certificate, College leaving Certificate, Conduct Certificate, OCMR registration certificate etc. Accordingly, the petitioner had deposited all the original certificates stated hereinabove at the time of taking admission in the P.G. Course at the said college. After graduating from that medical College, the petitioner submitted an application to the Medical College Authority seeking return of the original documents entrusted to the College by him at the time of admission and for issuance of P.G. Certificate, P.G. mark sheet, P.G. College leaving certificate and P.G. Conduct Certificate, etc. However, the Principal of the said College did not take step to return the documents nor did he issue the Pass Certificate of Petitioner's PG Course.

Opp. parties by filing counter affidavit submitted that in view of the M.C.I guideline dated 07.04.2020, they are unable to return the original certificates of the petitioner. The Counsel for the Opp. Parties, also contended that the petitioner has not complied the guidelines prescribed for issuance of those certificates. It is also stated that the petitioner is not entitled to get NOC from the opp. parties as he has not cleared some dues of the Institution. However, Learned counsel for the petitioner, Mr. Mohanty submitted that the students are not allowed to sit in the examination unless they clear all the dues of the College. In the instant case, the Petitioner was allowed to appear in the examination and he has already passed in the said examination. Hence, there cannot possibly be any outstanding dues pending against the petitioner. It is also submitted that the Opp. Party-Institution is harassing the petitioner by not issuing the original certificate.

The result of the P.G Examination was published on 29.06.2020 and provisional certificate has already been issued. After successful completion of his P.G. course in Hi-Tech Medical College and Hospital, the Petitioner has applied for Senior Resident at Institute of Medical Science and Sum Hospital at Bhubaneswar

and he was called for interview for the said post. He has also been successful in the interview and selected for the post of Senior Resident in the said institution. However, he was asked to submit the original certificates including the State Medical Registration Certificate, Mark-sheet, etc. Although all the documents were deposited in the Hi-Tech Medical College and Hospital at the time of admission in P.G. course but the same were not returned to the petitioner despite his running from pillar to post. Time and again, the issue was brought to the knowledge of the Principal of the Hi-Tech Medical College and Hospital, who was adamant not to return the original certificates. The Petitioner was, however, allowed to take the photocopy of those original documents. On the strength of the photocopy of the documents, he was allowed to join as Senior Resident in IMS and SUM Hospital on 21.07.2020 with an undertaking to produce the original documents after returning back from the COVID-19 duty.

The conduct of the Principal, Hi-Tech Medical College and Hospital does not appear to be one that is expected from a person in such a prestigious post with a lot of responsibilities. Since the petitioner has already passed Post Graduation examination in the

said Medical College and Hospital, he is not obliged to obey unnecessary dicta of the authority of the college. It is alleged that the college authorities had threatened the Petitioner with disciplinary action or coercive measures, when he requested to return his original certificates. If the said allegation is true, the conduct of the Hi-Tech Medical College and Hospital is one that is highly deplorable.

The institution is duty bound to release the original certificates entrusted at the time of admission, unless there is specific undertaking; or bond of compulsory employment at the said institute; or any other rule or regulation which permits them to retain the same. In the case in hand, there is no such provision which has been brought to our notice either in the prospectus issued by the Commissioner of Entrance Examination or the College or in any of the notification issued with respect to the admission by the said College which enable it to withhold such certificates.

Even the University Grants Commission (UGC) has issued warning to universities and colleges against retention of original documents of the admitted students. No institutions can take any original certificate into their custody to use it as a tool to

bargain or threaten the students with some unknown or disputed claims. In similar vein, All India Council for Technical Education (AICTE) has also issued instructions to all the technical institutions in the country not to retain original certificates of the students. Hence, the practice of withholding original Certificates of the students and not returning them to the students is completely illegal as the certificates are the most valuable property of the students, it cannot be withheld by the college for any reasons, in violation of rule of law.

Similar sentiments have succinctly echoed by Madras High Court in ***Muthukamatchi Vrs. Director of Technical Education, Anna University, Guindy, Chennai<sup>1</sup>***, which has categorically held that the certificates are not fixed deposit receipts on which, the college can claim a general lien. It is a valuable property of every student. Hence, the certificates cannot be allowed to be retained at any rate.

A Ld. Single Judge of the High Court of Kerala in ***Shireen Vs. State of Kerala<sup>2</sup>*** (***Shireen case***), while dealing with the question whether original documents

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<sup>1</sup> W.P.(MD) No. 14394 of 2012 (Madras High Court)

<sup>2</sup> 2017(2) KLT 691

could be retained by the college when there was a bond given by the student, held that:

*“6. The case of the College is that since the petitioners have not fulfilled their bonded obligation, the College is entitled to withhold their certificates. The petitioners do not admit their liability. In other words, the certificates of the petitioners are withheld by the College for enforcing a disputed liability. Even assuming that the agreement/bond executed by the petitioners in favour of the College authorising the College to withhold their certificates is not void for want of consideration, the question arises is whether the certificates of the petitioners can be withheld for enforcing a disputed liability. This question assumes importance in the light of the large number of similar litigations instituted before this Court in the recent past. A bond is only an instrument by which a person obliges or binds himself to another for payment of a sum of money or in the performance of any other act. It is fundamental that if a person does not fulfill the bonded obligation, he is liable to pay the amount agreed upon and if he does not pay the amount agreed upon, in a country where rule of law prevails, the payment has to be enforced through a court of law. It cannot be said that non-payment of the amounts covered by the bond will always be without any basis. In some cases, it may be without any basis, but in some others, it may be due to some reason which the person concerned believes to be a justifiable reason for non-payment. The sustainability or otherwise of the reason, on the basis of which the liability under the bond is denied, has to be examined by the court through the process of which the payment is to be enforced. If the practice of withholding the documents as a means to realise the disputed amounts is permitted to be adopted, the person affected would be compelled to forgo the defences, if any, available to him. Further, education has always been, and continues to be one of the most important needs of mankind. Every citizen has a right to education and State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The recent change in*

*the social and economic fabric of the country has, however, created a situation where it is inevitable for the State to permit private educational institutions to meet the requirements in the field of 20-09-2020 (Page 4 of 5). Education is essentially a charitable activity. As such, even when private bodies establish educational institutions, the object shall be charity and not profit. Of course, reasonable revenue surplus can be generated by the institutions for the development of education and expansion of the institutions. Certificates of education/qualification are very important documents as far as students are concerned. Non availability of the certificates establishing educational qualifications may result in deleterious consequences as far as students are concerned, for, the same are the first and foremost documents insisted for employment and higher studies. It is trite that whatever tends to injustice of operation, restraint of legal rights, whatever tends to the obstruction of justice and whatever is against the morals can be said to be against public policy. In other words, matters which concern the public good and the public interest connote the public policy. (See P. Rathinam v. Union of India ((1994) 3 SCC 394). It is also trite that the principles governing public policy are capable, on proper occasion, of expansion or modification and the court in a given case is empowered to declare a practice as opposed to public policy in consonance with public conscience and in keeping with public good and public interest. (See Central Inland Water Transport Corporation v. Brojo Nath Ganguly ((1986) 3 SCC 156) and State of Rajasthan v. Basant Nahata ((2005) 12 SCC 77). The agreements obtained by the College from the petitioners authorizing them to withhold the certificates of the petitioners for payment of the amounts covered by the bonds, if any, executed by the petitioners, cannot be accepted as an approved social conduct and the same, in that sense, is unethical. Further, agreements of that nature are against public good and public interest as well. In the circumstances, even assuming that the agreement/bond executed by the petitioners in favour of the College authorising them to withhold their certificates is not void for want of consideration, the same is void as opposed to public policy, in the light of S. 23 of the Indian Contract Act.*



*In the result, the Writ Petition is allowed and the third respondent is directed to issue to the petitioners, all the certificates that are issued to similarly placed candidates who have completed MBBS Course from the College. All the original certificates of the petitioners collected at the time of their admission shall also be released to them. The aforesaid directions shall be complied with within two weeks from the date of receipt of a copy of this judgment. It is made clear that this judgment will not preclude the College from instituting appropriate civil suits against the petitioners for realisation of the amounts due to the College in terms of the bond executed by the petitioners.”*

The above judgment was relied on and followed in ***Tissna Paul v School of Communication and Management Studies***<sup>3</sup>. The Division Bench, in Appeal against the above judgment in ***Shireen case*** [W.A No. 493/2017 (The Principal, MES Medical College, Perinthalmanna v. Shireen M.T.)], did not deal with the specific question of whether the condition for withholding of certificates would run contrary to public policy. On facts, the Appellate Court noticed that, withholding was of the MBBS certificate, which course was completed by the student in the self- financing college. After examining the terms of the prospectus it was found that withholding if at all, was contemplated only of certificates entrusted to the college at the time of admission. The Appellate Court held that MBBS certificate is not one deposited at the time of

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<sup>3</sup> MANU/KE/0972/2017

admission. It was thus held that the college could not have withheld the MBBS certificate.

In ***Neethu v State of Kerala & Ors***<sup>4</sup>, the High Court of Kerala has held that the original academic certificates of a B.Sc. Nursing student were withheld by a college, when she had to leave her studies midway. The college defended their action by claiming that since the student had discontinued her studies after the cut-off date for closing of admissions, fixed by the Government, and hence in terms of the prospectus issued by the college, she is liable to pay four times the annual tuition fees paid by her, to the institution by way of liquidated damages. The college relied on a clause in a Government Order (Ext. R5(a)) issued by the Health and Family Welfare Department which stated as under:

*“(xii) The Educational Agency can retain the Tuition Fee remitted by the student, in the even a student admitted under the Management quota or Government quota, deserts or discontinues his/her studies for any reason at any time after i.e. 22<sup>nd</sup> August 2012. In case, any student admitted to the College decides to cancel the admission for any reasons whatsoever, the Educational Agency shall be entitled to collect the tuition fee of the entire course as liquidated damages. However, in the event of the seat so falling vacant being filled up by a new candidate, the tuition fee collected as per this clause shall be refunded. The documents pertaining to such student*

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<sup>4</sup> (2019) 2 KHC 669

*shall be released only on payment of the above amount.”*

The Court, after noting that the documents were given to the college for verification and ascertaining the veracity of the original documents while providing admission in the college, held that merely because the student left the institution, it cannot be held that the management has suffered loss; there was no evidence before the court to arrive at such a finding; and it is the duty of the management to prove such incident, in order to secure liquidated damages. Thereafter, the Ld. Single Judge held that:

*“...the original documents of the student are not given by her as a collateral security for ensuring payment of liquidated damages. **The documents of a student are required for her professional and career prospects and those are all personal documents** which will not earn any amount to respondents 4 and 5, and it cannot be utilized by the said respondents for the purpose of realizing the alleged liquidated damages by selling, mortgaging or in any manner providing the same as a security. Moreover, the Respondents are unable to show any Statute enabling the management to detain personal certificates of a student other than the clause contained in Ext.R5 (a). ... by providing such a clause under Ext.R5 (a) Government Order, a coercive tactics is employed against the student to realize money from the student, without even adjudicating the issue with respect to any liquidated damages suffered by the management. Looking at that angle, such a clause contained under the Government Order is against the public policy liable to be interfered with by this Court under Article 226 of the Constitution of India.” (emphasis supplied).*

It is also apposite to note that a Ld. Single Judge of the High Court of Gujarat in **MonilPrakashchandra Thakkar Vs. State of Gujarat**<sup>5</sup>, held that in the absence of any rule or regulation, the College cannot retain the original documents. The Ld. Single Judge observed that “*where no mechanism has been evolved by respondent No. 3 College to ensure that the fees for the entire duration of the course are secured from the petitioner who intends to leave the course midway; and as, in the present case, the petitioner has not been made to sign any bond or furnish a Bank guarantee, the retention of the original documents of the petitioner by respondent No. 3 College is unsustainable in law.*” It may be relevant to quote the following observations made in the said judgment:

*“10. Having given thoughtful consideration to the issue in hand, there is only one aspect that requires to be determined in the petition, namely, whether respondent No. 3 College has any right or lien over the original documents of the petitioner who has opted to cancel the admission midway, and whether its refusal to handover the said documents is permissible by rules/regulations, or law.*

*11. In order to answer this question, reference may be made to paragraph 8 of the judgment of the Supreme Court in **Islamic Academy of Education and another v. State of Karnataka and others** [(2003) 6 SCC 697]; which, according to the learned Senior*

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<sup>5</sup> 2014 GLH (3) 481

Advocate for respondent No. 3 College, confers a right upon the said College to demand the fees of the entire course and to retain the original documents, in lieu thereof. The relevant paragraph is reproduced hereinbelow:-

"8. It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. **In our view an educational institution can only charge prescribed fees for one semester/year. If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/Bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution.** The balance fees must be kept invested in fixed deposits in a nationalised Bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance."

12. In the above quoted portion of the judgment, the Supreme Court has dealt with a situation where the student intends to leave the course in midstream and the remedy available to an institution in such a situation. It has clearly been stated in the above judgment that in such a situation, at the highest the institution may require that student to give a bond/Bank guarantee for the balance fees of the

*course being received by the Institution even though the student leaves in midstream. However, the Supreme Court has categorically stated that an educational institution can only charge prescribed fees for one semester/year. The submission on behalf of respondent No. 3 College that the said College has a right to insist upon charging the fees for the entire duration of the course, may now be tested. The judgment of the Supreme Court in Islamic Academy of Education and another v. State of Karnataka and others (Supra.), does recognize a situation where the student leaves the course midway. However, it has categorically laid down that the institution may require the student to fill up a bond or give a Bank guarantee to ensure that the fees for the entire course would be recovered by it if the student leaves the course midway through it. It was, therefore, incumbent upon respondent No. 3 College to evolve an effective mechanism as per the judgment of the Supreme Court which, admittedly, has not been done in the present case. The remedy that could have been taken by respondent No. 3 has not been taken and in the absence of such a mechanism, no automatic right flows to respondent No. 3 College from the judgment of the Supreme Court. When it has failed to do what it ought to have done as per the above judgment, in such a situation, respondent No. 3 College cannot claim any implicit right only by virtue of the said judgment.*

*13. The Supreme Court has, in the above judgment left it to the concerned institution to either require that the student gives a bond/Bank guarantee or to evolve any other kind of mechanism in the event that the student leaves the course midstream. It was open for respondent No. 3 College to protect its interest by asking the petitioner and other students to fill up a bond or give a Bank guarantee, in order to protect the balance amount of fees for the whole course...”*

Further, in ***Poojaben Rajesh Kumar Patel Vs. State of Gujarat***<sup>6</sup> and ***Nidhi Kishanbhai Vasava Vs. Dean-Gujarat Medical Education and Research Society***<sup>7</sup>, the same High Court relied on the above judgment and held that “*in the absence of any such rule or regulation, it is not permissible for the third respondent College to retain the original documents of the petitioner and refuse to return the same*”.

We are conscious of the fact that the Hon'ble Supreme Court in Writ Petition (Civil) No. 376/2018 ***Association of Medical Super Speciality Aspirants and Residents & others Vs. Union of India & others*** and connected cases decided on 19.08.2019, had upheld the issue of mandatory bonds in the case of Medical colleges. However, as noted in some of the abovementioned judgments, perhaps, the Government should now device suitable mechanisms to protect itself and the interest of the colleges, if they so deem fit, without insisting on submission of original certificates of students. Withholding of the hard earned certificates of students, at the whims and fancies of colleges, do not portray a good picture of the education system in the country.

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<sup>6</sup> [MANU/GJ/0520/2014]

<sup>7</sup> [MANU/GJ/0574/2014]

The question raised hereinabove assumes significance in the light of the fact that this Court is unnecessarily burdened with similar litigation at a regular interval which is avoidable at the end of the college authorities. Since the present petitioner does not have any bonded obligation, his documents submitted before the college cannot be withheld. The certificate of educational qualifications are the most important document in so far as the career of the student is concerned and it is most valuable property of students. Non-availability of such certificates or delay in producing the same may result in deleterious consequences in so far as the career of the students are concerned because these are the first and foremost documents insisted by a college or an employer.

Considering the submission of the learned counsel for the parties, we dispose of the writ petition with an observation that since the petitioner has passed the examination conducted by the Institution and has already completed his course from the Institution, the College authority should not treat the students like bonded labourer. Further, the so-called reliance on the advisory dated 7.4.2020 issued by the M.C.I in the present case is misdirected and it is not applicable to the petitioner's case.



It is, therefore, directed that all the original certificates of the petitioner collected at the time of his admission shall be released forthwith. The aforesaid direction shall be complied within one week from the presentation of this order. It is made clear that the Opposite Parties shall not create any stumbling block while releasing such original certificates and issuing the PG certificates, mark sheet etc. to any of the students in future. Needless to state, if the college face any loss on account of the conduct of any student or any dues has to be recovered from the students, it is open for it to take recourse to other remedy as may be available in law. In the facts and circumstances of the present case, the Petitioner is directed to clear all the dues, if any, without any further delay.

As the Lock-down period is continuing for COVID-19, learned counsel for the petitioner may utilize the soft copy of this order available in the High Court's website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No. 4587 dated 25.03.2020.

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**S. Panda, J.**

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**S. K. Panigrahi, J.**