

The Principal vs Tomy Mathew

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Court : Kerala

Decided On : Jun-30-2020

Judge : Honourable Mr. Justice a.M. Shaffique, Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/27900/2019

Appellant : The Principal

Respondent : Tomy Mathew

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE & THE HONOURABLE MR. JUSTICE GOPINATH P. TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942 WP(C).No.27900 OF 2019(J) PETITIONER: THE PRINCIPAL KANNUR MEDICAL COLLEGE, ANJARAKANDI P.O. MAMBA, KANNUR 670 612. BY ADVS. SRI.ABDUL RAOOF PALLIPATH SRI.K.R.AVINASH (KUNNATH) RESPONDENTS:

1 TOMY MATHEW FATHER OF ANSU ANNIE TOMY, POZHIIYIL HOUSE, KATTAPANA SOUTH P.O. IDUKKI 685 515. 2 THE ADMISSION AND FEE REGULATORY COMMITTEE, FOR PROFESSIONAL COLLEGE IN KERALA, T.C. 15/1553-4, PRASANTHI

BUILDING, M.P. APPAN ROAD, VAZHUTHACAUD, THIRUVANANTHAPURAM 695 014, REPRESENTED BY THE CHAIRMAN. R1 BY ADV. SRI.KALEESWARAM RAJ R1 BY ADV. SRI.VARUN C.VIJAY R1 BY ADV. KUM.THULASI K. RAJ R2 BY SMT.MARY BENJAMIN, SC, ADMISSION SUPERVISORY COMMITTEE FOR PROF. COLLEGES THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 2406-2020, THE COURT ON 30-06-2020 DELIVERED THE FOLLOWING: -:2:-

JUDGMENT

Dated this the 30th day of June, 2020

Shaffique, J.

The admissions granted by the Kannur Medical College to the MBBS Course in that college in the year 2016-17, were found to be illegal and contrary to law by the Admission Supervisory Committee (hereinafter also referred to as the 'ASC') constituted in terms of Section 4 of the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 Act, [Act 19 of 2006] (now repealed) through an order dated 14.11.2016. The Supreme Court refused to interfere with this

order and it became final. As a consequence, the admissions

granted to nearly 150 students had to be cancelled. Though the State promulgated an ordinance to regularize the admission, the said ordinance was declared unconstitutional by the Supreme Court. -:3:-

2. On 25.07.2018 there was a recommendation by the

ASC to the Kerala University of Health Sciences to withdraw the affiliation/recognition of Kannur Medical College for the academic year 2018-2019. These proceedings were found to be in order by a Division Bench of this Court

through a judgment dated 1.8.2018 in W.P.(C) No.25895 of 2018. The matter was carried to the Supreme Court of India through S.L.P (C) No. 23225 of 2018 and connected cases. A consent order was passed on 29.08.2018 in S.L.P (C) No.23225 of 2018 and connected cases which order is on record in this case. We are concerned here only with the 1 st direction that forms part of the consent order dated 29.08.2018 which provides that the college shall return an amount equivalent to the double of the amount collected from the students together with refund of the fee deposited by each one of the 150 students, with the college, by 04-09-2018. There was a further direction that the Admission Supervisory Committee shall ascertain and report as to whether the amounts in question have been refunded, as directed. On 1.9.2018, the Admission Supervisory

Committee filed its report which inter alia suggested that the -:4:-

amounts directed to be paid/refunded to each of the students have not been paid/refunded in terms of the directions issued by the Supreme Court. Therefore, a further direction was issued by the Supreme Court on 4.10.2018 through which it was directed that the Admission Supervisory Committee shall determine the amount payable to each one of the students. The ASC has passed individual orders in respect of claims raised before it by the students/guardians. In this writ petition, we are concerned with an order passed by the Admission Supervisory Committee, in terms of the direction issued by the Supreme Court, determining the amount payable by the petitioner college on account of the fees and other amounts collected from the applicant.

3. The question of maintainability of this Writ Petition

under Article 226 of the Constitution of India having been questioned at the admission stage, a Division Bench of this Court, to which one amongst us (myself) was a party, came to the

conclusion through an order dated 20.2.2020, that the Writ

Petition was maintainable. Therefore, we do not propose to go into that issue again. -:5:-

4. Before we proceed to determine the correctness or

otherwise of the impugned order, we must notice the observation of the Supreme Court in the order dated 4.10.2018 that the quantum of amount collected by the College from each student and what amount has been refunded is a seriously disputed fact and also notice the following direction issued to the Admission Supervisory Committee (ASC) by the Supreme Court.

The ASC to consider the material which may be placed on record by the respective parties and take a decision in accordance with law on the basis of the evidence adduced in each of the case with respect to each of the students. (emphasis is ours)

Thus it is clear that the direction given to the ASC was to individually determine the case of each student, in accordance with law, having due regard to the material which may be placed on record and the evidence adduced by the parties. Since the entire exercise undertaken by the ASC was in terms of the aforesaid direction of the Supreme Court, it goes without saying that the ASC was bound to conclude its determination strictly in terms of the direction issued by the Supreme Court.

5. We have heard Sri.Abdul Raoof P., learned counsel for -:6:- the petitioner, Smt.Mary Benjamin, learned Standing Counsel for

the 2nd respondent (the Admission and Fee Regulatory Committee) and Sri.Kaleeswaran Raj, learned counsel appearing for the 1st respondent, the complainant before the 2nd respondent Committee. The learned senior Counsel for the petitioner would contend that the ASC had determined the issue based on mere surmises and conjectures and that there was no reliable material before the Committee to hold that the amount in question was payable to the complainant/student. He states that the college has not received any amount other than the admitted amount of `19.65 lakhs and therefore no further liability could be fastened on the college. An amount of `39.30 lakhs has already been refunded. The learned counsel appearing for the ASC would point out that the ASC which was a committee under Act 19 of 2006 has not been impleaded in this writ petition

and this, according to her, is a fatal defect. She states that the second respondent herein is the body constituted under the enactment which repealed and replaced Act 19 of 2006, namely Act 15 of 2017. On merits, she would contend that the College had indulged in

-:7:-

severe malpractices resulting in the orders against them which have already been noticed above. She would urge that we must not interfere with the orders which have been issued by the ASC after careful scrutiny of all materials placed before it. The learned counsel for the student/complainant would support the findings in the order and urge that we should not interfere with the order.

6. We must first consider the question as to whether the

non-impleadment of the ASC should be a ground to refuse consideration of the matter on its merits. We are of the considered opinion that the ASC is not a necessary party to these proceedings since the Committee is not required to justify its findings before this Court in any manner. We are fortified in taking such a view in the light of the law laid down by a 3 Judge Bench of the Supreme Court in *M.S Kazi v. Muslim Education Society & Others* [(2016) 9 SCC 263].

7. The ASC has on 19/6/2019 determined the amount

payable to the student/complainant to be a sum of `37,39,000/- after deducting the amount of `39,30,000/- already paid by the college. We have gone through the order impugned before us and -:8:- perused the material produced before the ASC in order to determine whether the order passed by the ASC was sustainable and in accordance with the directions issued by the Supreme Court.

8. In terms of the Supreme Court order, the college was

required to refund the fees and double the amount collected over and above the fees. Therefore, the Committee determined the amount to be refunded in the following manner:-

Sl.	Particulars	Amount
No. 1	Fee including hostel fee	`19,65,000/-
2	Twice the amount collected over and above	`57,04,000/-

the fee

(`28,52,000 x 2) 3 Amount already refunded `39,30,000/- 4 Balance payable (1 + 2 - 3) ` 37,39,000/-

9. The complainant claimed that they paid `48.17 lakhs

to the college of which `2,50,000/- was paid on 12/9/2016, `20,00,000/- on 17/9/2016, `24,50,000/- on 24/9/2016 and `1,17,000/- on 1/10/2016. The college denied having received such an amount and took up a contention that the student coming under NRI category had paid only `19.65 lakhs. `39.30 lakhs was given back as per directions issued by the Apex Court

:-9:-

and therefore no further amount is payable. As evidence in the case, the complainant was examined as CW1 and he relied upon several documents including his bank statements, income tax return and the bills for sale of agriculture produce in order to justify the source of the aforesaid amounts which is alleged to have been paid on the aforesaid dates.

10. The learned counsel for the petitioner/college disputed

most of the claims. He contended that none of these documents relied upon prove the source of such a huge amount and the same has not been received by the college. The committee placed reliance on Ext.A1, statement of accounts issued by Union Bank of India, Kattappana which would reveal withdrawal of `5 lakhs on 11/3/2016. Ext.A2 is yet another account with the same bank, which would show withdrawal of `5 lakhs on 11/3/2016. Ext.A3 is the passbook issued by Canara Bank which proves withdrawal of `1 lakh on 19/3/2016 and `2 lakhs on 22/3/2016. Ext.A4 series are bills which disclose sale of agriculture produce and the total amount comes to `10,08,753/-. The bank account passbook of CW1's wife maintained by Canara Bank is produced

:-10:-

as Ext.A5 which shows withdrawal of `3 lakhs on 9/3/2016. Exts.A8 and A9 had been relied upon to prove gold loan taken from Canara Bank and Central Bank,

Kattappana on 11/3/2016 and 19/3/2016. The amount so obtained was `5.20 lakhs. Further, complainant states that he had taken loan from his friends and relatives which would amount to `5 lakhs. He also took up a

contention that he had received further loan of `7 lakhs from his friends and relatives. Committee found that the aforesaid evidence would disclose that CW1 had raised `37 lakhs in March

2016. According to him, the amount was utilized for payment to

D.Y.Patil Medical College and he got back `35 lakhs on 11/9/2016. Though there was no evidence to prove the above, the Committee based on Ext.A4 found that the student had submitted an application for admission to MBBS course in the said college. In the light of the aforesaid factual scenario, it was found that there is no reason to disbelieve the complainant. Further reference had been made by the Committee to Ext.A2 statement of accounts which shows withdrawal of `10 lakhs on

-:11:- on 29/9/2016 covered by Ext.A13. His income tax returns were also perused in order to prove that he had additional income and accordingly the Committee came to a finding that the

complainant had paid `48.17 lakhs. The challan issued by the college apparently has no relevance to the facts of the present case. Learned counsel for the college points out several infirmities in the account statement in the evidence of CW1. The source shown by the complainant is with reference to amounts collected by him during March, 2016. Though it is contended that `37 lakhs was paid to D.Y.Patil Medical College, there is no material to prove that the said amount had been paid and the same had been returned. The committee however had placed reliance on the fact that the said amount had been paid to D.Y.Patil Medical College. Therefore, we do not think it necessary to discard the source of funds produced by the complainant from

though Ext.A1 had been produced to prove withdrawal of `5 lakhs on 11/3/2016 for payment to D.Y.Patil Medical College, the purpose of withdrawal of further amount

of `5 lakhs on 12/5/2016 -:12:- has not been mentioned anywhere in the affidavit and no material had been produced to prove that the said payment was utilized for the purpose of payment to the college. Ext.A1 shows that there is a withdrawal of `5 lakhs on 11/3/2016 and on

11. The complainant also produced the certificate showing

the details of source of income prepared by a Chartered Accountant, which according to the complainant proves the source of funds during the relevant time. We are of the view that it is appropriate to refer to the said details and evaluate whether the same amounts to the source which could have been utilized for payment to the college. The said details read as under:

Sl.No.	Date	Particulars	Amount
1	29/09/16	Gold loan IDCB	1,00,000
2	09/03/16	Gold loan Canara Bank	4,00,000
3	11/03/16	Gold loan Central Bank	1,20,000
4	07/03/16	Sale Agriculture Product	1,50,000
5	07/03/16	Sale Agriculture Product	3,50,000
6	09/03/16	Sale Agriculture Product	2,20,233
7	09/03/16	Sale Agriculture Product 80320	
8	09/03/16	Sale Agriculture Product 93807	
9	09/03/16	Sale Agriculture Product	1,14,393
10	09/03/16	Unsecured loan from 3,00,000 friends & relatives -:13:-	
11	11/03/16	Unsecured loan from 5,00,000 friends & relatives	
12	11/03/16	Withdrawal from CC	5,00,000
13	12/05/16	Withdrawal from business	5,00,000
14	16/09/16	Unsecured loan from 10,00,000 friends & relatives	
15	22/03/16	Unsecured loan from 2,00,000 friends & relatives	
16	2016-		
17	Income 2016-17 as per IT	6,19,918.00 Return Total	52,48,671.00

12. Sl.No.1 relates to gold loan of `1 lakh covered by

Ext.A13. There is no reason to doubt the genuineness of the same. Ext.A9 relates to gold loan of `4 lakhs. Counsel for the college points out that the aforesaid gold loan was not taken on is a fund transfer of `3 lakhs on 12/3/2014 and the same amount was withdrawn on 12/3/2014. Similarly there is a fund transfer of `3 lakhs on 12/3/2015 which is seen withdrawn on 12/3/2015. On the same day. It is pointed out that the gold loan ticket of `3 lakhs on 9/3/2016 is a continuation of

gold loan taken on 12/3/2014. The contention of the college is that the gold loan was taken either on 12/3/2014 or prior to that and when interest on the gold -:14:- loan is paid, it is renewed from time to time. That is the reason for effecting fund transfer instead of showing cash withdrawal. The number of the gold loan ticket was GL8916 which in fact corresponds to the fund transfer mentioned as `3 lakhs on covered by the entry in Sl.No.2 aforementioned is not the amount actually withdrawn on 9/3/2016. Therefore, only `1 lakh can be taken from Sl.No.2. With reference to Sl.No.3 regarding gold loan from Central Bank, it is covered by Ext.A8 dated 11/3/2016 and there is no reason to doubt the genuineness of the same.

13. Sl.Nos.4 to 9 covered by Ext.A4 series are bills for sale

of agriculture produce. The sale was on 7/3/2016 and 9/3/2016. The contention urged by the learned counsel appearing for the college is that in the income tax returns for the assessment year 2016-2017, the agriculture income is shown as `3,36,433/-. Therefore only that amount could be taken on record as agriculture income. It is pointed out that the receipt issued by Biju Kurian, Hill Produce Dealer for sale of coffee on 7/3/2016 for `1,50,000/- and `3,50,000/- cannot be taken, as the same was

-:15:-

not included in the income tax return. There is no dispute with reference to the sale of cardamom as evident from the other documents. Learned counsel appearing for the complainant would however submit that during the assessment year 2016- 2017, the statement of income attached to the IT return would show that the gross receipt is `5,08,753/- and after deducting an expenditure of `1,72,320/-, the net income is derived as `3,36,433/-. We are of the view that an amount of `5,08,573/- can be taken as the source of income which is rounded to `5,10,000/-. As far as the amount of `3,50,000/- and `1,50,000/- covered by two receipts are concerned, the same is not part of the agriculture income disposed of by the complainant and therefore cannot be taken on record. Sl. No.10 is the unsecured loan from the relatives. This exactly is the amount which is reflected in Ext.A9 which we have already dealt with and it has been found that it relates to the gold loan taken either on 12/3/2014 or earlier and cannot be treated as a source of

income. As far as Sl.Nos.11 and 12 are concerned, sufficient documents are available to prove the same. It covers `5 lakhs each withdrawn on

-:16:-

withdrawn from the business account on 12/5/2016. But the complainant does not have a case that the said amount had been withdrawn for the purpose of payment to the college. But still the same can be taken as a source of income. With reference to Sl.No.14, statement of account of Union Bank of India shows withdrawal of `10 lakhs on 17/9/2016. There is no reason to doubt the genuineness of the said source. With reference to Sl.No.15 regarding unsecured loan from friends and relatives, there is no document to prove the same.

14. In fact, the Chartered accountant has also included the

income shown in the IT return as also the income which requires to be deleted from the source. That income is for the whole of the year and forms part of the income derived by the complainant as proved by him. In the light of the aforesaid discussion, the total source the complainant was able to prove is `33,30,000/-.

15. Having arrived at the aforesaid figure, the amount payable/refundable by the college to the complainant/student is redetermined as under:- -:17:-

Sl. No.	Particulars	Amount
1	Fees including hostel fee	`19,65,000/-
2	Double the amount collected over and above the fee ($`13,65,000 \times 2$)	`27,30,000/-
3	Total amount payable in terms of the direction of the Supreme Court	`46,95,000/-
4	Amount already paid	`39,30,000/-
5	Balance amount payable	`7,65,000/-

Ext.P12 shall stand modified accordingly. In the result, this writ petition is partly allowed as under:- The college shall refund an amount of `7,65,000/- (Rupees Seven lakhs sixty five thousand only) to the 1 st respondent within four weeks from the date of receipt of a copy of this judgment, failing which, further steps shall be taken by the 2 nd respondent in accordance with law.

Sd/- A.M.SHAFFIQUE JUDGE Sd/- GOPINATH P. Rp True copy JUDGE P.S. To Judge -:18:- APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE LETTER SUBMITTED BY PETITIONER BEFORE THE 2N RESPONDENT

DATED 13.08.2019. EXHIBIT P2 TRUE COPY OF THE ORDER IN SPECIAL LEAVE TO APPEAL (C) NO 23225/2018 OF THE HONBLE SUPREME COURT DATED 29.8.2018. EXHIBIT P3 TRUE COPY OF THE ORDER OF THE HONBLE SUPREME COURT IN SLP (C) NO. 23225/2018 DATED 4.10.2018. EXHIBIT P4 TRUE COPY OF THE HONBLE SUPREME COURT

ORDER SLP (C) NO. 23225/2018 DATED

27.9.2019.

EXHIBIT P5 TRUE COPY OF THE COMPLAINT 1.6.2018. EXHIBIT

COLLEGE. EXHIBIT P8 TRUE COPY OF THE UNDERTAKING DATED 10.01.2019. EXHIBIT P9 TRUE COPY OF THE REPLY FILED BY PETITIONER BEFORE THE 2ND RESPONDENT. EXHIBIT P10 TRUE COPY OF THE REJOINDER FILED BY THE PETITIONER. EXHIBIT P11 TRUE COPY OF THE PROOF AFFIDAVIT ALONG WITH DEPOSITION. -:19:- EXHIBIT P12 TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT IN ASC (P) EXHIBIT P13 TRUE COPY OF THE BANK STATEMENT PRODUCED BY THE 1ST RESPONDENT BEFORE EXHIBIT P14 TRUE COPY OF THE BANK STATEMENT PRODUCED BY THE 1ST RESPONDENT BEFORE EXHIBIT P15 TRUE COPY OF THE BANK PASS BOOK PRODUCED BY THE 1ST RESPONDENT BEFORE EXHIBIT P16 TRUE COPY OF THE PURCHASE BILL PRODUCED DATED 7.3.16 PRODUCED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT. EXHIBIT P17 TRUE COPY OF THE PURCHASE BILL DATED 7.3.16 PRODUCED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT. EXHIBIT P18 TRUE COPY OF THE RECEIPT DATED 9.3.16 PRODUCED BY THE 1ST RESPONDENT BEFORE EXHIBIT P19 TRUE COPY OF THE RECEIPT DATED 9.3.16 PRODUCED BY THE 1ST RESPONDENT BEFORE EXHIBIT P20 TRUE COPY OF THE RECEIPT DATED 9.3.16 PRODUCED BY THE 1ST RESPONDENT BEFORE EXHIBIT P21 TRUE COPY OF THE RECEIPT DATED 9.3.16 PRODUCED BY THE 1ST RESPONDENT BEFORE -:20:- EXHIBIT P22 TRUE COPY OF THE CHEQUE DATED 16.3.16 PRODUCED BY THE 1ST RESPONDENT BEFORE EXHIBIT P23 TRUE COPY OF THE CHEQUE DATED 10.3.16 PRODUCED BY THE 1ST RESPONDENT

BEFORE EXHIBIT P24 TRUE COPY OF THE CHEQUE DATED 11.3.16
PRODUCED BY THE 1ST RESPONDENT BEFORE EXHIBIT P25 TRUE COPY
OF THE PASS BOOK PRODUCED BY THE 1ST RESPONDENT BEFORE THE
2ND RESPONDENT. EXHIBIT P26 TRUE COPY OF THE COUNTERFOIL
PRODUCED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT.
EXHIBIT P27 TRUE COPY OF THE COUNTERFOIL PRODUCED BY THE 1ST
RESPONDENT BEFORE THE 2ND RESPONDENT. EXHIBIT P28 TRUE COPY
OF THE CERTIFICATE PRODUCED BY THE 1ST RESPONDENT BEFORE THE
2ND RESPONDENT. EXHIBIT P29 TRUE COPY OF THE IT RETURN
VERIFICATION PRODUCED BY THE 1ST RESPONDENT BEFORE EXHIBIT
P30 TRUE COPY OF THE FIR 313/18 OF CHAKKARAKKAL POLICE STATION
BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT. EXHIBIT P31
TRUE COPY OF THE STATE OF THE CHARTERED ACCOUNTANT
PRODUCED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT.
EXHIBIT P32 TRUE COPY OF THE APPLICATION OF THE STUDENT
PRODUCED BY THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT.

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