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The Principal vs Sabna P.,

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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)/29416/2019

Appellant : The Principal

Respondent : Sabna P.,

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.29416 OF 2019(B) PETITIONER: THE PRINCIPAL KANNUR MEDICAL COLLEGE, ANJARAKANDI.P.O., MAMBA, KANNUR-670612. BY ADVS. SRI.ABDUL RAOOF PALLIPATH SRI.K.R.AVINASH (KUNNATH) RESPONDENTS:

1 SABNA P., D/O.ABOOBACKER, AGED 21 YEARS, POOZHITHARA HOUSE, ANANTHAVOOR.P.O., THIRUNAVAYA VIA, MALAPPURAM-676301. 2 THE ADMISSION AND FEE REGULATORY COMMITTEE FOR PROFESSIONAL COLLEGES IN KERALA, T.C.15/1553-4,

PRASANTHI BUILDINGS, M.P.APPAN ROAD, VAZHUTHACAUD, THIRUVANANTHAPURAM-695014, REPRESENTED BY THE CHAIRMAN. R1 BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR R1 BY ADV. SMT.A.MEGHA R1 BY ADV. SMT.KARTHIKA M.R. 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Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 Act, [Act 19 of 2006] (now repealed) through an order dated 14.11.2016.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 -:3:- Court.

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.

4. Before we proceed to determine the correctness or -:5:-

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, learned counsel for the petitioner, Smt.Mary Benjamin, learned Standing Counsel for -:6:-

the 2nd respondent (the Admission and Fee Regulatory Committee) and Sri.P.V.S.Sudhir, learned Counsel appearing for the 1st respondent, the complainant before the 2nd respondent Committee. The learned 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 `11.65 lakhs and therefore no further liability could be fastened on the college since an amount of `23.30 lakhs being the double the amount of `11.65 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 severe malpractices resulting in the orders against them which have already been

-:7:- 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 29/8/2019 determined the amount

payable to student/complainant to be a sum of `23,05,000/- after deducting the amount of `23,30,000/- already paid by the college. We have gone through the order impugned before us and perused the material produced before the ASC in order to determine whether the order passed by the ASC was sustainable -:8:- 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 `11,65,000/- 2 Twice the amount collected over and above `34,70,000/- the fee (`17,35,000 x 2) 3 Amount already refunded `23,30,000/- 4 Balance payable (1 + 2 - 3) `23,05,000/-

9. The complainant claimed that they have paid an

amount of `29 lakhs to the college. The amounts were paid in 3 instalments. First two instalments were paid during September 2016 and the last instalment on 1/10/2016. The college took up a contention that they have only collected `11.65 lakhs being the tuition fee and hostel fee. In order to prove the claim, complainant/student was examined as CW1 and she placed reliance on Exts.A1 to A6 documents. Reference is made to

Ext.A1, a sale deed dated 31/1/2018 executed by the -:9:-

complainant and father of CW1 in favour of another person by which 10 cents of property had been sold for `1.5 lakh per cent. The contention urged was that the amount was received in advance and was utilized for payment of money to the college. The document Ext.A1 only indicates the total sale consideration as `1,81,200/-. Complainant has a case that money was advanced earlier and the actual value was not shown. No material has been produced to prove the actual price and that

money was advanced earlier. We are of the view that in the absence of any such evidence, the Committee committed serious error in placing reliance on the said document which was executed on 31/1/2018. Ext.A2 is a document issued by Thirunavaya Service Co-operative Bank which would disclose that Mrs.Safiya P., had taken a gold loan of `4.5 lakhs on 27/9/2016 by pledging gold ornaments. There cannot be any doubt regarding the genuineness of the above document. Ext.A6 is yet another document executed by the father of the complainant in favour of Ananthavur Service Co-operative Bank mortgaging his property. He availed a loan of `10 lakhs. Document was executed on

-:10:-

view that the complainant was not in a position to prove the source of `29 lakhs. The Committee had placed reliance on the oral assertions of CW1 regarding the sale of property covered by Ext.A1 and had arrived at the aforesaid conclusion, which, according to us, was perverse. The complainant had already received `23.30 lakhs which would be sufficient compensation for her.

In the result, we are of the view that the order passed by the Committee cannot be sustained. In the result, the writ petition is allowed setting aside Ext.P10 order dated 29/8/2019.

Sd/- A.M.SHAFFIQUE JUDGE Sd/- GOPINATH P. Rp JUDGE -:11:- APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE LETTER SUBMITTED BY KMC TOASC ON 13.8.2018. EXHIBIT P2 TRUE COPY OF THE ORDER IN SPECIAL LEAVE TO APPEAL (C)NO.23225/2018 OF THE HON'BLE SUPREME COURT DATED 29.8.2018. EXHIBIT P3 TRUE COPY OF THE ORDER OF THE HON'BLE SUPREME COURT IN MA.NO.2354/18 IN SLP (C)NO.23225/2018 DATED 4.10.2018. EXHIBIT P4 TRUE COPY OF THE ORDER IN CONTEMPT PETITION NO.908/2019 IN SLP NO.23225/18 DATED 27.9.2019. EXHIBIT P5 TRUE COPY OF THE COMPLAINT DATED 2.8.2018. EXHIBIT P6 TRUE COPY OF THE STATEMENT FILED BEFORE THE 2ND RESPONDENT. EXHIBIT P7 TRUE COPY OF THE RECEIPT ISSUED BY THE COLLEGE. EXHIBIT P8 TRUE COPY OF THE UNDERTAKING DATED 18.1.2018. EXHIBIT P9 TRUE COPY OF THE PROOF AFFIDAVIT ALONG WITH DEPOSITION. EXHIBIT P10 TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT IN ASC(P)91/18/HO/TVPM/MBBS/KMC DATED 29.8.2019. -:12:- RESPONDENTS' EXHIBITS: EXHIBIT R1(A) TRUE COPY OF THE STATEMENT CONTAINING A

LIST OF THE PAYMENT, MADE TO THE COLLEGE, THE DATE OF PAYMENT, REFUNDABLE AMOUNT ASSESSED BY THE COMMITTEE, AMOUNT REFUNDED BY THE COLLEGE ETC.

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