

The Principal vs Reena, M.

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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)/29810/2019

Appellant : The Principal

Respondent : Reena, M.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.M.SHAFIQU & THE HONOURABLE MR. JUSTICE GOPINATH P. TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942 WP(C).No.29810 OF 2019(A) PETITIONER: THE PRINCIPAL KANNUR MEDICAL COLLEGE, ANJARAKANDY, P.O. MAMBA, KANNUR-670 612. BY ADVS. SRI.ABDUL RAOOF PALLIPATH SRI.K.R.AVINASH (KUNNATH) RESPONDENTS:

1 REENA, M. AGED 50 YEARS W/O. GOKUL RAJ, AMRITH, P.O. PALLIKUNNU, KANNUR-4. 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-695 014, REPRESENTED BY THE CHAIRMAN. R1 BY ADV. SRI.KALEESWARAM RAJ R1 BY ADV. SRI.VARUN C.VIJAY R1 BY ADV. A.ARUNA R1 BY ADV. SMT.RIYA RAYMOL IYPE 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Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 Act, [Act 19 of 2006] (now repealed) through an order dated 14.11.2016.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 ASC shall ascertain and report as to whether the amounts in question have been refunded, as directed. On 1.9.2018, the ASC filed its report which inter alia suggested that the amounts directed to be paid/refunded to each

-:4:-

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 ASC 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 ASC 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 the -:6:- 2nd respondent (the Admission and Fee Regulatory Committee) and Smt.A.Aruna, learned Counsel appearing for the 1 st

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

-:7:- 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, by order dated 07/08/2019 determined

the amount payable to student/complainant to be a sum of ₹38,35,000/- after deducting the amount of ₹23,30,000/- already paid by the college. We have gone through the order impugned -:8:- before us and 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	₹11,65,000/-	
2	Twice the amount collected over and above	₹50,00,000/-	
	the fee (₹25,00,000 x 2)		
3	Amount already refunded	₹23,30,000/-	
4	Balance payable (1 + 2 - 3)	₹38,35,000/-	

9. The complainant has alleged that they have paid an amount of ₹36.65 lakhs, whereas, according to the management/college, they received only ₹11.65 lakhs covering the tuition fee and hostel fee.

10. In order to prove the claim, complainant was examined as CW1 and she relied upon Exts.A1 to A13. According to CW1, ₹5 - :9:- lakhs was paid on 28/6/2016, ₹20 lakhs on 6/9/2016, ₹5 lakhs on

orientation. Ext.A1 is the statement of accounts of the student's mother maintained with Syndicate Bank, Chirakkal. According to her, she had withdrawn ₹70,000/- from the said account. Ext.A2 is the statement of accounts issued by Kerala Gramin Bank, Podikundu showing withdrawal of ₹6.70 lakhs from 9/3/2016 to would disclose withdrawal of ₹11 lakhs on 3/9/2016. Ext.A4 is the statement of accounts of the student's father. He had withdrawn ₹2.50 lakhs on 6/9/2016. Ext.A5 is the account maintained by him with Federal Bank, Kannur/Talap which would evidence withdrawal of ₹11.73 lakhs from 30/4/2016 to 29/9/2016. Ext.A6 is the statement of account of grandmother of the student maintained with Kerala Gramin Bank which would disclose withdrawal of ₹4,04,000/- on 26/8/2016 and ₹58,000/- on the Kerala Gramin Bank which would disclose withdrawal of ₹50,000/- on 3/9/2016. Ext.A10 discloses encashment of cheques -:10:-

showing bank withdrawals from Federal Bank and Ext.A11 discloses statement of cash withdrawn from Rins Marketing and Services, other bank accounts of the complainant, her husband and her mother. In fact, the complainant has also

produced a list of transactions under which they have sourced the amounts. It starts from 9/3/2016 and the statement would show that small amounts were withdrawn from the said account. The list showing the source of funds is extracted hereunder:-

STATEMENT OF CASH PAID DATE TRANSACTION CASH PAID MARKETING AND SERVICES COLLEGE -:11:- COLLEGE MARKETING AND SERVICES COLLEGE MARKETING AND SERVICES COLLEGE CASH PAID TO ORIENTATION DAY 1,65,000

The aforesaid withdrawals would indicate that even the admissions had not started either in March or in May. Probably, the payment of `5 lakhs on 28/6/2016 would be an advance. Taking into account the source shown by the complainant as extracted above, we are of the view that the amounts withdrawn up to 19/5/2016 can be excluded as well as the amount of `10,000/- each withdrawn on 3/8/2016 and those 3/9/2016. Those

-:12:- would have been petty cash taken for personal purposes. After excluding the said amount, the total source would be `37.77 lakhs, in which event, the contention urged by the complainant is justified. Therefore, there is no reason to take a different view from what has already been decided by the Committee.

Writ petition is therefore dismissed. Sd/- A.M.SHAFIQUE JUDGE Sd/- GOPINATH P. Rp JUDGE -:13:- APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 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.2354/2018 IN SLP(C) NO.23225/2018 DATED 4.10.2018. EXHIBIT P4 TRUE COPY OF THE ORDER OF THE HON'BLE SUPREME COURT IN CONTEMPT PETITION NO.908/2019 IN SLP (C) NO.23225/2018 DATED 27.9.2019. EXHIBIT P5 TRUE COPY OF THE COMPLAINT DATED 18.7.2018. EXHIBIT P6 TRUE COPY OF THE STATEMENT FILED BEFORE THE 1ST 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

7.8.2019. -:14:- RESPONDENTS' EXHIBITS: EXHIBIT R1 A TRUE COPY OF THE REPORT SUBMITTED BY THE 2ND RESPONDENT WITHOUT ANNEXURES BEFORE THE HON'BLE SUPREME COURT DATED 4.9.2018 EXHIBIT R1 B TRUE COPY OF THE ORDER RELAVENT PAGES DATED 19.9.2017 IN CRL.MC. NO- SESSIONS, THALASSERRY.

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