

(2021) 12 UK CK 0142
In the Uttarakhand High Court
Case No : Special Appeal No. 409 Of 2021

Diksha Bauwal & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 13-12-2021

Acts Referred:

Citation : (2021) 12 UK CK 0142

Hon'ble Judges : Raghvendra Singh Chauhan, CJ; N. S. Dhanik

Bench : Division Bench

Advocate : T.A. Khan, Ravi Shankar Kandpal, C.S. Rawat, Susheel, Shubhang Dobhal, Parikshit Saini

Final Decision : Dismissed

Judgement

Raghvendra Singh Chauhan, CJ

1. The petitioners have challenged the legality of the order, dated 05.07.2021, passed by a learned Single Judge in Writ Petition (M/S) No.1857 of 2018, whereby relying on the undertaking given by the learned Senior Counsel appearing for the respondent Nos.3 and 4, an undertaking not contested by the petitioners, the learned Single Judge had disposed of the writ petition as under:-

"Accordingly, the writ petition is disposed of by taking the statement made by Mr. Rajendra Dobhal, learned Senior Advocate on record. However, it is made clear that fee, if determined in excess of what is indicated above, then petitioners shall be at liberty to challenge such fee determination. Petitioners shall also be at liberty to move appropriate application in WPMS No. 933 of 2018".

2. Briefly, the facts of the case are that the petitioners had qualified the examination of NEET-under graduate-2017. The State of Uttarakhand, and the H.N.B. Uttarakhand Medical Education University, the respondent Nos.1 and 2 respectively, had issued a bulletin for centralized counseling which was to commence from 16.07.2017. The choices were to be given between 16.07.2017 to 21.07.2017. This counseling was to be held by the respondent No.2. Further,

the respondent No.2 had required the candidates to prepare a draft of Rs.4.00 lakhs in case of State quota, and Rs.5.00 lakhs in case of Management quota, and to deposit the same by way of fees.

3. According to the petitioners, relying upon this statement made by the respondent No.2, they had deposited the said amount with the respondent No.2 through bank drafts. After counseling, the petitioners were allotted to the respondent Nos.3 and 4, namely, Shri Guru Ram Rai University, and Shri Guru Ram Rai Institute of Medical and Health Sciences (for short "SGRRIM & HS").

4. Furthermore, according to the petitioners, the Government of Uttarakhand had fixed the fee for the academic years 2015-16, 2016-17, and 2017-18 for the MBBS course. In the colleges of respondent nos.3 and 4, the fees was fixed as Rs.5.00 lakhs per year for the All India Management quota. However, notwithstanding the fact that the fees was fixed by the State Government, by notice dated 12.05.2018, the respondents demanded an amount of Rs.7,97,000/- from the candidates belonging to the All India Management quota, and Rs.6,97,000/- from the candidates belonging to the State quota. According to the petitioners, this amount was in excess by Rs.45,000/- in comparison to the fees which was fixed by the respondents in previous academic years.

5. Moreover, according to the petitioners, by the said notice, the fees being charged for the academic year 2017-18 is Rs.19.76 lakhs per year for one student. According to the petitioners, the said demand is, per se, illegal. Hence, the petitioners had filed a writ petition before the learned Single Judge.

6. Before the learned Single, the learned Senior Counsel appearing for the respondent Nos.3 and 4 had drawn the attention of the learned Single Judge to Prayer No.4., wherein the petitioners themselves had stated that "respondents be directed to recover only the amount of Rs.7.52 lakhs from the petitioners relating to All India Management quota for MBBS course, and Rs.6.52 lakhs relating to Government quota for the academic session 2018-19 and for further years".

7. Mr. Rajendra Dobhal, the learned counsel appearing for the respondent Nos.3 and 4, upon instructions, had given an undertaking before the learned Single Judge that the respondent Nos.3 and 4 would not charge any fees in excess of Rs.7.52 lakhs from the candidates belonging to the All India Management quota seat, and Rs.6.52 lakhs from the candidates belonging to the State quota seat. Moreover, if there is a revision of fees, the same would be made in accordance with the fees determined by the Fee Committee.

8. Accepting the undertaking given by Mr. Rajendra Dobhal, the learned Senior Counsel appearing for the respondent Nos.3 and 4, and considering the fact that no objection was raised to the said undertaking by the petitioners, the learned Single Judge, as mentioned hereinabove, disposed of the writ petition in the aforementioned terms. Hence, the present appeal before this Court.

9. Mr. T.A. Khan, the learned Senior Counsel appearing for the appellants-writ

petitioners, submits that, the entire fight is not with regard to the fees chargeable for the academic year 2018-19; in fact, it is with regard to the fees chargeable for the academic year 2017-18. According to him, it is the fees which is chargeable for the academic year 2017-18, which was the subject-matter of the writ petition.

10. However, a bare perusal of the impugned order clearly reveals that not a single contention was raised by the petitioners with regard to the fees which is chargeable for the academic year 2017-18. No such contention was raised orally before the learned Single Judge. The learned Senior Counsel admits that orally such a contention was not raised, but, nonetheless, such contention does find place in the pleadings. Therefore, according to the learned Senior Counsel, the learned Single Judge was not justified in passing the impugned order.

11. The position being taken by Mr. T.A. Khan, is clearly unacceptable. For, in catena of cases, the Hon'ble Supreme Court has clearly opined that Judges are bound to adjudicate upon the contentions/pleas which are raised before them orally, and not with regard to the contentions/pleas which may be raised in the pleadings. Therefore, firstly, the petitioners should have raised the plea with regard to the fees chargeable for the academic year 2017-18 orally before the learned Single Judge. However, admittedly, it was not done so.

12. Furthermore, once an undertaking was given by the learned Senior Counsel appearing for the respondent Nos.3 and 4, once the said undertaking was not objected to by the petitioners, the impugned order, in fact, is a consensual order. It is, indeed, a settled position of law that no appeal would lie against a consensual order. Hence, this appeal would not even be maintainable before this Court.

13. Even otherwise, keeping the interest of the petitioners in mind, the learned Single Judge has granted them the liberty to challenge any decision reached by the Fee Committee, in case, the fees were to be revised in future. Therefore, the interest of the petitioners continues to be safeguarded by the learned Single Judge.

14. For the reasons stated above, this Court does not find any merit in this appeal. It is, hereby, dismissed.