
(2021) 12 KL CK 0083

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 18834, 18363 Of 2021

Najma

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 10-12-2021

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A

Citation : (2021) 12 KL CK 0083

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P.J

Bench : Division Bench

Advocate : Rajit, R.T. Pradeep, P.Sreekumar, P.Santhosh Mathew, Premchand R. Nair, Jayasankar V. Nair

Final Decision : Partly Allowed

Judgement

Mohammed Nias C.P.J.

1. The petitioners in both the Writ Petitions are students presently doing their final year, 9th semester of MBBS course. They joined the 5th respondent College (Kerala Medical College, Palakkad) during the academic year 2016-2017, after successful completion of NEET examination.

2. The petitioners remitted fee for the first and second year MBBS course as is evident from the receipts produced. Alleging that there was no infrastructure facilities in the 5th respondent College to carry on the course, the petitioners and other students filed W.P. C. No. 24826/2018 in which the students of the 5th respondent College were directed to be re-allotted to nine different medical colleges in the State by Ext. P7 judgment. The petitioners had already lost one academic year (2018-2019) due to the litigation and they were directed to join the 5th semester of the 2nd year MBBS course to the re-allotted college namely, the 6th respondent medical college for the academic year 2019-2020. Petitioners submit that they were allotted to the 6th respondent college and were to continue the 5th semester of the 2nd year MBBS Course and the 6th semester of

the 3rd year MBBS course in the year 2019-2020. . After joining the 6th respondent college, petitioners submit that they have paid the fee for the academic year 2020-2021 as well and, after successful completion of the 7th and 8th semester, they were promoted to the 4th year MBBS course for the final 9th semester in the academic year 2020-2021. Thus, it is the case of the petitioners that they have remitted the entire fees for the MBBS course. Alleging that notwithstanding the payment, the petitioners are prevented from attending the classes for the 9th semester, which commenced from 1-09-2021 on the ground that the petitioners have to remit an additional amount of Rs. 11,49,700/- each and the NRI fees applicable to one student, the petitioners were not included in the posting from 1-09-2021 to 18-1-2022 in the 6th respondent college. In the said circumstances, the above Writ Petition was filed in which an interim order was passed directing the 6th respondent to permit the petitioners to attend the clinical posting classes as scheduled as per Ext. P19 along with the other students re-allotted from the 5th respondent college.

3. The 5th respondent college despite service of notice did not appear to contest the Writ Petition. The 6th respondent has filed a counter affidavit in which it was submitted that the petitioners were to undertake the II MBBS (3rd, 4th and 5th semesters), III MBBS-Part 1 (6th and 7th semesters), III MBBS-Part 2 (8th and 9th Semesters), and house surgency as a part of MBBS course in their College. It was also specifically contended that the petitioners were re-allotted to the 6th respondent institution for joining from the 2nd year onwards. It was submitted that the petitioners though had commenced the II MBBS course in the 5th respondent institution, had to be given training for the entirety of the II MBBS course and not just the 5th semester of the II year MBBS course on account of the lack of training given in the 5th respondent college. In other words, to get the petitioners prepared for the screening test and the II MBBS examinations scheduled for February 2020, the 6th respondent institution ensured that instruction was provided to cover the entirety of the II MBBS course between July 2019 and February 2020. The 6th respondent college asserts that they had to do this on the basis of the instructions of the university as well. In short, the 6th respondent college submits that they have only collected and demanded the fees for the study undertaken by the petitioners and imparted in their college and if the petitioners have made payment to the 5th respondent college they will have to initiate steps for recovering the said amounts alleged to have been paid as fees towards the II MBBS class there from the said college and not to refrain from paying the fees to the re-allotted college.

4. Heard the learned counsel for the petitioners Sri. Rajit, the learned Counsel Sri. R.T. Pradeep for the 2nd respondent., the learned counsel Sri. P.Sreekumar for the 3rd respondent, Sri. Santhosh Mathew, the learned counsel for the 6th respondent and the learned Senior Government Pleader.

5. Having considered the pleadings and the contentions of the parties, it is clear that the petitioners were given training for the entire II MBBS course and not

from the 5th semester of the second year course in the 6th respondent college. This fact is not disputed by the petitioners and their only case is that for the same period they have effected payments to the 5th respondent College as well and as such they are not liable to pay the same again to the 6th respondent college. In as much as the petitioners do not dispute the fact that they received training for the entire II MBBS course from the 6th respondent college, the said college cannot be deprived of the tuition fees for the training given. It may be true that as far as the petitioners are concerned, they have already remitted the fee for the same period to the 5th respondent college. Under such circumstances, we have no hesitation to hold that the demand made by the 6th respondent College for the fee from the petitioners for imparting instructions for the entire II MBBS course, cannot be said to be improper or illegal. We, therefore, repel the contentions of the petitioners that the 6th respondent College is not entitled to collect the said fee from them.

6. Having held so, we have to consider the plight of the students who had, for no fault attributable to them, to make double payments for the same period of study to the 5th respondent college as well as to the 6th respondent college where they joined later.

7. The learned counsel for the petitioners would submit that the State Government had issued the essentiality certificate to the 5th respondent college whereby they have certified that it is their responsibility to take over the responsibility of the students admitted to the 5th respondent college in case there is any problem in the running of the said college. A true copy of the essentiality certificate issued on behalf of the Government produced as Ext.P23 along with IA No. 1 of 2021 by the petitioners. The relevant clauses of the essentially certificate reads as follows:

"It is certified that:

- (a) the applicant owns and manages 500 bedded hospital of Palakkad District.
- (b) It is desirable to establish a Medical College in the public interest.
- (c) Establishment of a medical college at Palakkad district District by the Royal Medical Trust is feasible
- (d) All clinical materials as per Medical Council of India norms are available in the hospital
- (e) The Management will share 50% of the total MBBS seats with Government to fill students from the list prepared by the Commissioner for Entrance Examinations, Kerala"

It is further certified that in case the applicant fails to create infrastructure for the Medical College as per Medical Council of India norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the College with the

permission of the Central Government".

8. Thus, it is the contention on behalf of the petitioners that the State having indemnified and has taken over the responsibility of the students admitted to the 5th respondent college as also the responsibility to pay their fees in the instant case as petitioners have already paid to the 5th respondent college and it is their further submission that the State can resort the provisions of revenue recovery act to recover the amount so collected by the 5th respondent college and to pay the same either to the petitioners or to the 6th respondent College.

9. The learned Government Pleader would oppose this submission saying that the certification in the essentiality certificate that the responsibility is taken over cannot mean that the fee of the students are also to be paid by the Government, in the event of the 5th respondent college not run properly. The learned Government Pleader further submits that the undertaking in the essentiality certificate can only mean that the State must bear the burden of accommodating the students in another institution and nothing more.

10. After giving anxious consideration to the rival contentions on this aspect, we are of the definite view that the responsibility of the State undertaken by them while issuing the essentiality certificate cannot be permitted to be whittled down as though there is no responsibility at all. Essentiality Certificate is a mandatory requirement in terms of Section 10-A of the Indian Medical Council Act for the setting up of the college and the same is thus a quasi-judicial function exercised by the State Government which includes undertaking to take over the obligation of the private educational institutions in the event of that institution becoming incapable of imparting education. Such an undertaking on the part of the State Government being unequivocal and unambiguous actually legitimizes a medical college declaring it fit to impart medical education. Such an exercise cannot be taken lightly nor can the undertaking given be allowed to be watered down. The Government had issued the essentiality certificate regarding the desirability and feasibility of having the proposed college at the proposed location and also certifying that it had the necessary infrastructure to set up a new medical college. A certificate constitutes a solemn statement by an authority certifying certain conditions of things on which persons can act and assume that the certifying authority will indemnify in the case of an eventuality mentioned therein. We also notice that when a medical college is set up, two performance bank guarantees running into crores of rupees, depending on the intake of students as well as the infrastructure facilities like the number of beds etc. in the hospital attached, from a Scheduled Commercial Bank valid for a period of 5 years are to be offered in favour of the Medical Council of India, New Delhi, by the proposed college. Thus, State can also explore the possibility of recovering the fee received by the fifth respondent college with the Medical Council of India (as it was described then) to make available the refund. Since the function of the State Government in granting essentiality certificate must be construed as a quasi-judicial function and it has a duty while issuing such a certificate to enquire

and determine the existence of several factors, it cannot be said that the same is a mere formality for setting up of a new Medical College. If the State does not perform its function of issuing essentiality certificate with the care and responsibility as required under the Indian Medical Council Act, the Central Government and the Indian Medical Council, who are to act on the same could be misled by the credentials of the proposed medical college and if the institution does not have the infrastructure to conduct the medical course in the way it should, the effect would be to bring out half-baked doctors who cannot be let loose in the society dealing with the life of patients. The hapless students in the instant case should be protected by the Government that has the wherewithal to recover the amount from the 5th respondent college.

11. Government has authorised, as per order No. G.O. (Ms)No. 82/2021/H&FWD dated, Thiruvananthapuram, 3-4-2021, the Director of Medical Education (DME) as the Requisition Authority to initiate revenue recovery proceedings by placing requisition before the concerned District Collector, in terms of the provisions of the Revenue Recovery Act.

In the aforesaid circumstances, we direct the following:-

- i) The petitioners shall pay the fees to the 6th respondent College in instalments before the completion of their course.
- ii) we also direct the Government (2nd respondent) to initiate revenue recovery proceedings to recover the amounts paid by the petitioners as fee for the II year MBBS Course to the 5th respondent college. If such amounts are not recovered within six months , the Government shall pay the amounts to the petitioners and then recover the said amounts from the 5th respondent college pursuant to the revenue recovery proceedings against them.

Needless to state that the petitioners will be allowed to attend the classes and to complete the course just as the other students similarly placed.

In the result, these Writ Petitions are allowed in part.