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(2012) 10 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition No. 18153 of 2011

Pawan Kumar Joshi and Others APPELLANT

Vs

State of Raj. and Others RESPONDENT

Date of Decision : 25-10-2012

Acts Referred:
Constitution of India, 1950 — Article 12, 226

Citation : (2013) 3 CDR 1522 : (2013) 4 RLW 3058

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : Sanjeev Prakash Sharma with Mr. Gaurav Sharma and Mr. Ajay Gupta, for the Appellant; S.M. Mehta, with Ms. Pallavi Mehta, G.S. Bapna, Gen (Sr. Advocate) with Mr. Sarvesh Jain, M.I. Khan and Mr. Angad Mirdha, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi

1. Since common question has been raised in the instant bunch of petitions by the petitioners who are students of Jhalawar Medical College, Jhalawar ("College") being run by Jhalawar Hospital & Medical College Society, Jhalawar ("Society") regarding fee structure for admission to MBBS course against payments seats, hence being decided by present order. In order to appreciate the grievance of the petitioners it will be necessary to glance through a few relevant background facts which has been noticed from CWP-10323/2009 & 18153/2011.

2. The petitioners are students of College who took admission either in the year 2009-10 or 2010-11 against payment seats on the basis of their selection through Rajasthan Pre-Medical Test ("RPMT") conducted by respondent Rajasthan University of Health Sciences ("RUHS") adopting Ordinance-272 of Rajasthan University Ordinance and their primary grievance is regarding the fee structure laid down by the Society against payment seats and what is being pointed out by

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the petitioners is that since the College is being owned & controlled by the State Government, no distinction of fee could have been made regarding free & payment seats and such of the students who are granted admission against payment seats are also to be charged the fee prescribed by the College against free seats and such action of the College charging fee against payment seats is not justified & in conformity with the law laid down by Hon''ble Apex Court.

3. It has come on record that the State Government while holding six medical government colleges vis-?-vis in Jaipur, Kota, Ajmer, Udaipur, Bikaner & Jodhpur, apart from private medical & dental colleges emerged with idea of opening one another medical college & hospital in Jhalawar in order to meet certain objects which reads ad infra:

(a) to provide territory health centre to the people of Jhalawar, Rajasthan & also to other nearby places of western India;

(b) to provide educational institute for under-graduation in the field of medical science to the meritorious as well as less meritorious students;

(c) to avoid financial burden and make the society as self financing institution;

(d) thus, the institute will impart both medical education & health care services to the people.

4. It was also considered that the government colleges being run by State since are facing lack of financial resources culminating into financial burden over the Government of Rajasthan and in order to meet out the financial burden & commitments, to establish new medical college it was decided to form society in the form of public private partnership model at Jhalawar but Jhalawar being remote as well as distant area on 02.05.2007 cabinet committee considered for establishing a medical college in Jhalawar and decided that private partner may be considered for which the Chief Minister was authorized to take its final decision and decided to form a society namely i.e. Jhalawar Hospital & Medical College Society, Jhalawar Rajasthan and that came to be registered under Raj. Registration of Societies Act, 1958 ("Act, 1958") on 08.08.2007 and the Government since willing to collaborate with private persons, in terms of clause-25 of the Rules & Regulations-cum-Memorandum of Association, it came to be appended with a right to collaborate with any of the private persons for bringing finances, expertise & efficiency in the management of hospital & medical college. Rules & Regulations of the society has been placed on record as Annx. R/1 in CWP-10323/2009 and for establishing in the form of public private partnership model on 28.12.2007 under the Chairmanship of Principal Secretary Medical & Health a meeting of the society took place based on the agenda of the Cabinet committee dt. 31.08.2007, decided that affiliation application may be filed with RUHS and No Objection Certificate may also be applied for and simultaneously application may also be submitted seeking recognition from Medical Council of India, which was granted with intake capacity of 100 seats, at the same time it was decided to charge the nominal tuition fee for the first 50

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seats and would be equivalent to the tuition fee charged by the government medical colleges and 35 seats shall be payment seats and tuition fee be chargeable as per the recommendations of Justice Bhargava''s fee regulatory committee constituted under the directions of Hon''ble Apex Court and 15 seats will be reserved for NRI to be filled through direct interview, at the same time the issue regarding salary of teaching/subordinate/paramedical staff & other employees was also decided, document to this effect has been placed on record and accordingly from the academic year-2009-10 admissions on the basis of counseling through RPMT came to be made and the present petitioners were admitted against payment seats in the college for the academic year 2009-10 & 2010-11 respectively. As it reveals from memorandum of association that the object of the Government behind forming Society was to run medical college & hospital into self-financed institution and the resources, property, land, building etc. of the medical college & hospital will vest in the Society which will retain the income and bear the expenditure of the Jhalawar Hospital & Medical College for the purpose of reducing the financial burden of the State Government as far as possible. However, the State Government whenever required has provided sufficient aid/funds to the society for meeting out their deficit budget but the object behind is not to be profiteering while imparting medical education. It has also been averred that expenditure of the college since 2007-2010 has been Rs. 10700.59 Lakhs which is far more than the income in the form of tuition fee received by the College i.e. Rs. 863.62 Lakhs and the Society is not profiteering by imparting medical education. The respondents have placed on record the documentary evidence to show that in other states government run institutions like Indira Gandhi Medical College & Research Institute, Pondicherry, Surat Municipal Institute of Medical Education & Research, Mahatma Gandhi Post Graduate Institute of Dental Sciences, Pondicherry etc. and in state of Kerala Cooperative institute of Technology, established under the self financing scheme which have two tier or three tier bifurcation of seats and are run through Society but controlled & managed by the State Government/University as the case may be and the admission/tuition fee is being prescribed and charged by the committee constituted by the society according to its norms for all practical purposes. It will be relevant to make here the reference regarding object of the Society which reads ad infra:-

Objectives of the society

6(I). To fulfill the glaring deficiency of an undergraduate/postgraduate Medical College in the region which offers the best educational facilities in all other fields.

(VII). To participate in various national health programmes, including National Family Welfare Programme, by linking with various Government/private hospitals and health centers (horizontally and vertically) and providing necessary infrastructure and facilities as per their demands.

(IX). To acquire land, build, equip, maintain, run or lease out the necessary infrastructure to achieve the above aims & objectives of the Society.

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(X).To acquire land by purchase, on lease or on rent/hire and other movable or immovable properties or build properties of any kinds from State Govt./Central Govt./Private person/private limited company for the use of opening of Medical/ Dental/Technical Educational Centres/Hospital/Institutions and to accomplish the objectives of the Society as stated above, and to construct building & equipped with plant & machinery thereon for these aims & objectives.

(XI). To manage/mortgage/pledge/hypothecate/ charge/ sell/ transfer /surrender/ let out by way of lease, license or on rent or otherwise dispose off or deal with whole or part of the assets/properties or any kind both movable and immovable belonging to the Society to fulfill the aims & objects of Society. The Society can also acquire/land/ property by above means. Any member can surrender his/her land/assets to the Society as per provision, for the attainment of the objects of the Society.

(XII).To enter into an agreements with any other Private trust/society, foundations/corporate entity/firms/Companies/Hospitals/N.R.I.s /State /Central Government or Semi Govt. Departments/Foreign Govt./Foreign Agency/Bank or Financial Institutions or any other party having any entity or any individual(s) for the purpose to fulfill the Aims & objects of the Society/Institute as per terms and conditions mutually agreed.

(XIII). To organize state & national level survey, research work, conversations, group discussions and invite dignitaries in the field of medical and health as visiting faculty to give lecture and import latest technique in their related field.

(XIV). To formulate & implement, plans, schemes, programmes in relation to educate & motivate about basic health care, Mother & Child Health Care, Breast Feeding, Family Planning, Adolescent Care, HIV/AIDS, STD, Immunization, Vaccination, Eye Donation, Blood Donation, Sanitation, Safe Drinking Water, and to establish blood bank, eye bank & various organ banks.

(XV). To do all of any of the above things by or through Governing Board or as authorized by the Governing Board through its Agents, Branches or otherwise and either alone and in conjunction with other and to promote and assist in the formation either as branches of the Society or otherwise of any company, association or body intended to advance in India, the aims and objects of the Society or any to them intended to carry out any purpose which may seem directly or indirectly to benefit the society of to assist in the promotion of the aims and objects aforesaid or any of them and to do all such other things as are incidental or conducive to the attainment of all the objects or any of them.

(XVI). Any other activity may be required to perform accomplish the objective of offering high quality education in medical & health and allied areas.

13. Executive Committee :

a) Executive Committee shall be constituted with delegation of powers relating to project implementation, finance, administration construction, payments,

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maintenance, facilities management, legal affairs, matters relating to membership and other day to day matters for running of the Society. The Executive Committee will have following eight members :

i) District Collector, Jhalawar, Rajasthan (ex-officio):Chairperson.

ii) Principal Medical College, Jhalawar: Vice Chairperson.

iii) Chief Medical and Health Officer, Jhalawar, Rajasthan (ex-officio): Member.

iv) P.M.O., Jhalawar/Superintendent of the Hospital (Ex-officio) : Member.

v) Chief Executive Officer of the Society : Member Secretary

vi), vii) & viii) Three persons to be nominated by the Government from amongst the non-governmental members of the Governing Board : Members.

b) The CEO shall be the convener cum Member-Secretary of the Executive Committee.

c) The powers and functions of the Executive Committee shall be as are delegated to it by the Governing Board from time to time.

d) Three members will constitute the quorum, one of them necessarily being either the Chairperson or Vice-Chairperson.

e) The Executive Committee shall meet as often as considered necessary by the Chairman, but not less than four times in one year.

23. CREATION, ADMINISTRATION AND MANAGEMENT OF THE FUNDS OF THE SOCIETY.

i) To construct the proposed Medical College and perform allied activities, the Government will transfer the 25 acre of land which the Hospital owns at present along with the existing buildings to the Society.

ii) The existing hospital staff will be given on deputation to the Society, though the services of the staff will continue to be regulated under the Rajasthan Service Rules (RSR) and they will continue to be treated as employees of the State Government.

iii) All existing equipments beds and other assets shall also transfer to the Society.

iv) There may be following sources for the creation of a fund of the Society.

a) Grants or contributions made by the Government of Rajasthan.

b) Grants and contributions made by the Government of India.

c) Grants, contribution or financial aid provided by any donor agency including international agencies.

d) Grants, Donations or contributions made by any other State Government or

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Institution or Society/trust/company within India.

e) Donations received from members, trade and industry and foreign/Indian donors/and by way of admission as per rules or decisions of Governing Body.

f) Fees and charges levied by the Society for the services rendered.

g) Income from deposits and investments.

h) Any other income or receipt received from any other source provided it is given or received for fulfilling any of the objectives of the Society.

25. OPERATION, MAINTENANCE AND MANAGEMENT OF THE HOSPITAL & MEDICAL COLLEGE-It is the responsibility of society to manage the Hospital & Medical College efficiently and follow the MCI rules. However, subject to conformity with MCI norms, the society has right to collaborate with any of the Private Company/Trust/ Firm/Society/ Person/ Association of persons for:-

(a) The Management of the Hospital.

(b) The Management of the Medical College.

For this collaboration the society has to pass a resolution in the Governing Board. The purpose of collaboration is being more expertise and efficiency in operation for public at large.

If the society decides to collaborate, enter into joint venture by resolution then the society will have to enter into Legal agreement, with the collaborator.

5. The relevant provisions of Rules & Regulations of the Society referred to clearly envisages that regarding management of the Society it has been entrusted to the governing board consisting of senior officers of the State and in regard to project implementation, finance, administration, maintenance & facilities and other day to day works of the society has been delegated to executive committee constituted of State officials. But the fact remains that as regards creation, administration, management & funds of the society, the government has interference in the control over the functioning of the College which is run through its registered society.

6. The main thrust of submissions of counsel for petitioners is that it being a government college for all practical purposes the nominal tuition fee to be charged from the present petitioners who have been admitted against 35 payment seats in the respective academic year and the fee charged by the college against the payment seats as per the recommendations of Justice Bhargava''s fee regulatory committee constituted under the directions of Hon''ble Apex Court is arbitrary and deserves to be quashed.

7. Counsel further submits that no distinction could have been made between the present medical college & other government medical colleges as regards the fee structure prescribed by the Government since funds were provided by the State Government for construction of college as evident from finance department letter

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dt. 26.06.2008 and the provisions of Rajasthan Civil Services Medical Attendant Rules, 1970 are applicable over teachers/employees of Jhalawar Medical College and once the college is controlled & owned by the Government merely managing the affairs through forming society that in no manner can be said to be private medical college and the fee structure provided by Justice Bhargava''s fee regulatory committee does not include Jhalawar Medical College and in absence of there being any private partner with the present college/society and grant in full is being provided by the State Government, it is as good as Government Medical College for all practical purposes.

8. In counter submission of counsel for respondent is that at the time of initial notice published regarding admission, it was clearly indicated regarding the fee structure available on the website of the institutions and of the present College and that indicated the fee chargeable as per the intake capacity of first 50 seats, nominal fee to be charged as like by the government colleges as against 35 seats which are payment seats, fee is to be charged as per recommendations of Justice Bhargava''s fee regulatory committee constituted under the directions of the Hon''ble Apex Court, from the students who are admitted through RPMT and at the same time 15 seats are reserved for NRIs to be filled by direct interview.

9. Counsel further submits that once the petitioners were made aware of at the time of admission regarding the fee chargeable against 35 payments seats as per recommendations of Justice Bhargava''s fee regulatory committee constituted under the directions of Hon''ble Apex Court, at later stage the petitioners are estopped to question the fee chargeable from them and placed reliance upon the judgment of Hon''ble Apex Court in Cochin University of Science and Technology and Another Vs. Thomas P. John and Others,

10. Counsel submits that the present college since run through society registered under the Raj. Societies Registration Act, 1958 and regulated by certain Rules & Regulations approved by the Registrar of Societies, although being run by the governing body constituted by the officials of the State and funds are being provided for meeting out the deficit budget by the State, but still it cannot be considered to be a government college as prayed for by the petitioners and the fee structure provided for payment seats is in conformity with the recommendations of Justice Bhargava''s fee regulatory committee and what has been prayed for by the petitioners is ill-founded and deserves rejection.

11. The question which has been raised for consideration & to be examined by this Court is on very limited compass that as to whether the present college run through a registered society formed by the State Government is under legal obligation to charge nominal fee as chargeable in government colleges against 35 seats reserved against payment seats.

12. From the material which has come on record, it indicates that the society has been formed in the name & style of Jhalawar Hospital & Medical College Society, Jhalawar duly registered on 08.08.2007 under the Act, 1958. The Rules &

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Regulations of the Society clearly envisages that apart from other objectives of the society, the existing hospital staff will be on deputation to the Society and as regards creation of funds of the Society it will be made through grant or contribution by the Government of Rajasthan and may also include grants, contributions or financial aid provided by any donor agency including international agencies or by any other State Government or Institution or Society/ trust/company within India and donations from members, trade and industry and foreign/Indian donors/and admissions shall be as per rules or decisions of Governing Board. It has also been envisaged that Society may accept donations for any building or fixed assets or any other property which directly helps in the development of Society. As regards operation, maintenance & management of the hospital & college, it is the responsibility of the Society to manage efficiently and follow the guidelines & norms laid down by MCI and has right to collaborate with any of the private company/trust/firm/society/person/association of persons for management of hospital and medical college but for collaboration the Society has to pass a resolution in the Governing Board. The purpose of collaboration is to bring more expertise & efficiency in operation for the public at large and may enter into agreement with any other private trust/society, foundations/corporate entity/firms/companies/hospitals/NRIs/state/central government or semi govt. departments/Foreign govt./foreign agency/bank or financial institutions or any other party having any legal entity or any individual(s) for the purpose to fulfill the aims & objects of the society/institute as per the terms & conditions mutually agreed. As regards the management & maintenance or creation/funds primary obligation is upon the Society & the State Government meet out the deficit budget of the Society for running administration/management of the hospital & college of the society. However, it may be difficult for such of the students who are not in a position to afford the fee structure notified for payment seats because of their poor economical condition but this fact cannot be ruled that the State Government is not in a position to run any additional government college with the fee structure prescribed at par of other government colleges and to meet out requirement/need of the time to have self financing educational institution to come forward and if the State Government has taken steps to create self financing educational institution, the State is certainly under obligation to meet out deficit budget of the self financing institution having control over its functioning and that would be in the interest of public at large that such of the self financing institutions being run by Government would be a safeguard against rationalization.

13. This issue has been left open to be examined in some appropriate case regarding the legal status of the Society in reference to Art. 12 of the Constitution but still if the State Government as alleged holds deep & pervasive control over the Society and in the given state of facts if considered to be the State within the meaning of Article 12 of the Constitution and amendable to writ jurisdiction U/Art. 226 of the Constitution in the light of the principles culled out by Hon''ble Apex Court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and

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Others, and affirmed in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, but still the college run by a registered society at least cannot be held to be a government college as prayed for & claimed by the petitioners.

14. The society registered under Act, 1958 through governing board holds independent legal status to run its administration & management and finances can be provided by various resources but the society which has its independent legal entity can certainly lay down its fee structure keeping in view the law laid down by Hon''ble Apex Court providing the fee structure for medical colleges in various judgments like in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, further considered in Islamic Academy of Education and Another Vs. State of Karnataka and Others, followed by P.A. Inamdar and Others Vs. State of Maharashtra and Others,

15. In the instant case, the intake capacity of the College duly approved by the MCI is 100 seats and 50 seats are reserved for nominal fee as being charged by the State Government in other government medical colleges and 35 seats are payment seats and one has to pay the fee in terms of recommendations of Justice Bhargava''s fee regulatory committee constituted under the directions of Hon''ble Apex Court and 15 seats are reserved for NRI quota to be filled through NRIs by direct interview.

16. It is not the case of the petitioners that they were not made aware of fee structure at the time of admission against 35 payment seats which was admittedly paid by each of them. However, the fact is that each of them has paid first installment of the tuition fee and thereafter approached to this Court by filing instant petitions and deposited the tuition fee at later stage in terms of interim order of the Court. However, it can be noticed that while granting interim protection to the writ petitioner, this Court in one of the CWP-18153/2011 observed in its order dt. 18.01.2012 that in the event writ petition being dismissed on any ground whatsoever the petitioner will be liable to pay the difference of fee, between the fee agreed to be paid at the time of admission and the fee paid under the interim order of the Court, with interest at the rate of 15% p.a. compounded six monthly.

17. This Court also finds substance in the submission made by respondent''s counsel regarding plea of estoppel holding that it will not be now open to the petitioners to contend that notwithstanding they had been admitted on a certain fee structure they are entitled to claim nominal fee as a matter of right and in a given situation plea of estoppel has been examined by the Apex Court in Cochin University of Science and Technology and Another Vs. Thomas P. John and Others, relevant part whereof reads ad infra :

In the present case, we find that the NRI students took admission on certain specific conditions and the University has a right to insist that those conditions are observed. To our mind, therefore, it would not be open to the students to

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contend that notwithstanding that they had been admitted on a certain fee structure they were entitled to claim as a matter of right, a reduction in fee to bring them at par with students admitted later under a lower fee structure. The argument of estoppel in such a case would, thus, be available to an educational institution.

18. This Court is also of the view that once the petitioners were admitted on certain fee structure which was disclosed to them at the time of admission, it will not be now open for them to question the fee which has been prescribed by the College chargeable against payment seats and that apart & as already observed supra the present College which runs through a society is not a government college and merely because it is owned & controlled by the State Government as alleged through a society registered under the Act, 1958 it cannot be considered to be a government college for all practical purposes and society is within its rights to prescribe the fee structure obviously keeping in view the guidelines laid down by Hon''ble the Apex Court in the judgment, referred to supra by fee regulatory committee.

19. As regards the further submission advanced by the petitioners that even the meritorious student who is higher in merit may not be able to secure admission if he is not in a position to pay/deposit the higher fee, in the opinion of this Court does not hold good for the reason that society has fixed 50 seats reserved to be filled through open competition nominal fee chargeable in other government colleges and open merit seat is certainly available for such of the students who finds place in the order of merit, but others have to bear the fee chargeable as regards other category and in view of what has been observed by this Court (supra), it cannot be construed that admission on merit is not available through open competition and the governing board of the society can certainly lay down the tuition fee chargeable against payment seats as per the recommendations made by Justice Bhargava''s fee regulatory committee and taking note thereof there appears no reason to restrain the college which is admittedly self financing institution from stepping forward to meet out the present financial requirement.

20. However, it is not the case of the petitioners that tuition fee chargeable against payment seats is not in conformity with the recommendations of the fee regulatory committee or exorbitantly higher, as such in the considered opinion of this Court, the bunch of petitions deserves rejection. Consequently, the petitions are devoid of merit and accordingly dismissed. Each of the petitioner who has not paid the fee as prescribed against payment seats and has paid the nominal tuition fee pursuant to interim order of the Court will be liable to pay, within a period of one month, the difference of fee between the fee chargeable against payment seats and the fee paid under the interim order of the Court, @ 15% per annum compounded six monthly as noticed by the Court while granting interim protection in CWP-18153/2011 vide order 18.01.2012. No cost.

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