

(2015) 09 MAD CK 0247

In the Madras High Court

Case No : Writ Petition No. 14471 of 2015 and M.P. No. 1 of 2015

Sarfarraz Ali A.S.Y.

APPELLANT

Vs

Saveetha School of Law

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Contract Act, 1872 — Section 171
Transfer of Property Act, 1882 — Section 6

Citation : (2015) 09 MAD CK 0247

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : N.G.R. Prasad for Row and Reddy, for the Appellant; L. Chandrakumar assisted by S. Saravanan, Advocates for the Respondent

Final Decision : Disposed off

Judgement

M. Sathyanarayanan, J—The petitioner had applied for admission to the respondent Law College and he was selected to undergo B.B.A., B.L.(Hons.) course which is also recognized by the Bar Council, for the academic year 2014-2015. The petitioner has also paid a sum of Rs. 25,000/- towards tuition fee on 27.06.2014 and Rs. 25,000/- towards transportation fee on 07.07.2014. The petitioner was informed that the daily attendance of each student would be uploaded in the College portal and it could be verified by the parents and if the student is absent for more than 4 classes in a week without any leave letter or written permission, the parents would be called and they have to explain the reasons for the absence of their ward. The petitioner would claim that though he has attended the classes regularly, it was not uploaded properly in the College portal and in this regard, the parents of the petitioner had also met the Principal of the respondent College to look into the same and on verification, the petitioner was informed that some mistake had occurred in uploading the attendance in the College portal and it will be sorted out, however it was not done so.

2. It is further stated by the petitioner that on 15.12.2014, the respondent

College announced that the first semester would commence from 18.12.2014 and a rumor was spread to the effect that the students have to redo the first and second semesters once again during next year. The petitioner made enquiries with the respondent in that regard and he was informed that he was fallen short of attendance by 8 classes in Economics and 9 classes in Accountancy and in connection with the same, the father of the petitioner met the Director of the respondent and handed over a representation in person and a promise was given that it was looked into, however on verification in the College portal, it was found that no rectification has been done.

3. The petitioner took a specific stand that it is impossible for a student to go out of the College after commencing the classes and unless and until permission is obtained, there is no possibility of coming out of the class and in the light of the strict enforcement of the attendance, the petitioner cannot absent himself in attending a particular class. The petitioner would further state that he as well as his parents are having great hope to see him as a good Advocate and unfortunately, he was not permitted to sit and write the examination and consequently he has to redo the semester and hence, came forward to file this writ petition.

4. This Court, while entertaining the writ petition along with four other writ petitions, had passed an interim order dated 21.05.2015 permitting the candidates including the petitioner herein to write the examinations commencing from 27.5.2015 and on 02.06.2015 and made it clear that the results shall not be published until further orders and they are also directed to file letters of undertaking stating that they will not indulge in any unlawful activities in the College in future to the Principal of the respondent College. Accordingly, the petitioner has also submitted the letter of undertaking and wrote the examinations.

5. The respondent has filed a counter affidavit stating among other things that the students cannot secure attendance if he is absent in the class for a particular hour and getting signature in the relevant documents at the time of admission is a regular feature which includes undertaking from the students and their parents to the effect that the students will not indulge in unlawful activities like ragging and other kind of indiscipline and the parents of the petitioner, being Advocates, are also aware of the same and signed the documents voluntarily. It is further stated by the respondent that the petitioner has shortage of attendance in Economics and Managerial Accounting and also lacked internal assessment marks in four subjects out of five subjects and in the light of the orders passed by this Court dated 18.12.2014 in W.P. No. 33998 of 2014, the petitioner was permitted to write the examinations and the results of the same has been withheld pending further orders from this Court. The petitioner was also permitted to attend the second semester classes in compliance of the orders passed by this Court. It is further stated by the respondent that the petitioner had the notorious distinction of locking up one of the faculty members in the classroom and he was suspended

for 15 days from 23.09.2014 to 03.10.2014 and after enquiry, the College Management was magnanimous enough to give him a reprieve by allowing him to re-join the classes on 04.10.2014 for the purpose of continuing his studies on the fond hope that he will improve his behaviour, however the petitioners continued to be irregular in attending the classes. The petitioner has also indulged in violence and broke the glass top of a desk in the College and an Enquiry Committee, consisting of two faculty members and Joint Registrar, conducted the enquiry and consequently, he was suspended from attending the College. The respondent has relied upon Regulation 12 which speaks about attendance required for admission to the examination and as per sub-clause(c) "if the candidate is lacking in attendance in any one of the subject(s), he/she will be detained from writing the examination in the subject(s) in which the candidate lacks attendance, but will be permitted to appear for the subjects in which the candidate has secured minimum required percentage of Attendance. However, the candidate cannot proceed to the next semester and will be detained in the same semester until he/she fulfills the required percentage of attendance by attending classes along with the following batch of students in the said subject(s). The subject(s) in which he/she is detained from writing the examination for lack of attendance shall not be treated as a failed subject(s) and will not be permitted to carryover the said subject(s) to the next semester". In the light of the said Regulation, the respondent would contend that the petitioner is not entitled to any relief and prays for dismissal of this writ petition.

6. Mr. N.G.R. Prasad, learned counsel appearing for the petitioner, on instructions, would submit that the petitioner is not feeling comfortable in continuing the studies in the respondent College and it would suffice to direct the respondent to return the original certificates/testimonials along with Transfer and Character Certificate so as to enable him to join in some other college and pursue his academic career and prays for appropriate orders. In support of his submissions, the learned counsel appearing for the petitioner relied upon the following decisions:

"(i) Order dated 10.07.2012 made in CrI.O.P. No. 9920/2012 [A. John Paul and two others v. State and another]

(ii) Order dated 18.12.2012 made in W.P.(MD). No. 14394 of 2012 [S. Muthulakshmi v. The Director of Technical Education, Anna University, Chennai and others]

(iii) Order dated 05.11.2014 made in W.P. Nos. 27809 to 27811 and 27973 to 27975 of 2014 [D. Vinoth Kumar and Others v. The Principal Secretary to Government of Tamil Nadu and others]

(iv) Vikrant Chourasiya v. State of M.P. And Others [W.P. No. 12778 of 2013 dated 06.08.2014 - Madhya Pradesh High Court]."

7. Per contra, Mr. L. Chandrakumar, assisted by Mr. S. Saravanan, learned counsel appearing for the respondent would submit that in the event of the

petitioner being permitted to leave the college, the vacancy caused cannot be filled up till the duration of the entire course and since the petitioner institution is a self-financing institution, run on the fees collected from the students, the petitioner has to pay the entire course fees and in that event only, original certificates would be returned to him. In support of his submissions, the learned counsel for the respondent relied upon the following judgments:

"(i) Irshad Mohammed Ali v. State of Kerala [CDJ 1996 Ker HC 271]

(ii) R. Gowthami v. The Regional Officer, All India Council for Technical Education and Others [CDJ 2012 MHC 1246 : 2012 (1) CWC 798]

(iii) Order dated 22.01.2013 made in W.P. No. 15881/2012 [Karnataka High Court]

(iv) Order dated 18.03.2014 made in W.P. No. 13792/2009 [Karnataka High Court]"

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. Though the petitioner prays for the relief of quashing the proceedings dated 08.05.2015, challenging the order of suspension with consequential direction permitting him to pursue B.B.A., B.L. (Hons.) course, the learned counsel appearing for the petitioner, on instructions, submitted that it would be suffice to direct the respondents to return the original certificates/testimonials along with the Transfer Certificate and Character Certificate so as to enable him to pursue his academic career in some other institution. Per contra, learned counsel appearing for the respondent submitted that unless and until the petitioner pays the entire course fees, certificates will not be returned for the reason that the seat which will fall vacant, cannot be filled up till the completion of the entire course and one seat may also go vacant which in-turn would definitely cause hardship and financial loss to the respondent institution, which is a self-financing one.

10. In the order dated 10.07.2012 made in Crl.O.P. No. 9920/2012 [A. John Paul and two others v. State and another] passed by this Court, the facts of the case would disclose that the petitioners therein had resigned their job in a private school and approached the second respondent Management for return of the original certificates and it was declined to be returned and therefore, lodged a complaint and since no action was taken by the jurisdictional police, has filed the Criminal Original Petition for registration of a case on their complaint. The learned Judge, in the said decision, has taken into consideration Section 6 of the Transfer of Property Act and arrived at the conclusion that the certificates such as Mark Sheets, Conduct Certificates are all properties which cannot be transferred at all and even by means of an agreement, the property which cannot be transferred cannot be the subject of transfer under the guise of the said agreement and it is to be treated as void and held that retention of the

certificates by the Management is unlawful. The learned Judge further held that entrustment of the certificates cannot be treated as a transfer and consequently, the Management therein has no authority to retain the certificates after the petitioners therein had resigned their job and therefore, directed the return of the certificates.

11. This Court, in the order dated 18.12.2012 made in W.P(MD). No. 14394 of 2012 [S. Muthulakshmi v. The Director of Technical Education, Anna University, Chennai and others], has held that the certificates given at the time of admission, are not like fixed deposit receipt on which, banks claim a general lien in terms of Section 171 of the Contract Act and therefore, it cannot be retained at any rate and issued a direction, directing the fourth respondent therein namely the Principal, Mount Zion College of Engineering, Pudukottai District to return all the original certificates to the petitioner therein.

12. In yet another order dated 05.11.2014 made in W.P. Nos. 27809/2014 etc., batch [D. Vinoth Kumar and Others v. The Principal Secretary to Government of Tamil Nadu and others], this Court has granted similar relief and also reserved the right of the institution to resolve the same independently in appropriate proceedings taken by both parties.

13. In *Irshad Mohammed Ali v. State of Kerala* [CDJ 1996 Ker 271], the Kerala High Court has held that the third respondent College therein is entitled to demand the payment of the entire fees for the course before Transfer Certificate is issued.

14. Similar view was taken by this Court in *R. Gowthami v. The Regional Office, All India Council for Technical Education & Others* [CDJ 2012 MHC 1246 : 2012 (1) CWC 798].

15. A Division Bench of Karnataka High Court, in the order dated 18.03.2014 made in W.P. No. 13792 of 2009 [Miss Smruthy v. DA Pandu Memorial R.V. Dental College & Hospital and another], has held that in advance for the whole course, the college cannot collect the fees and if the college is of the opinion that the student may leave in the midstream then it can demand a student to execute the bond/bank guarantee for the balance fees for the whole course.

16. In yet another decision in *Mr. Sunoj Mathew v. New Navodaya Institute of Nursing and Others* [Order dated 22.01.2013 made in W.P. No. 15881/2012], the Karnataka High Court held that so far as the documents which are in possession of the college, the dispute could be resolved between the parties in a private negotiation or else approach the appropriate forum.

17. The learned counsel appearing for the respondent has placed heavy reliance upon the prospectus of the University relating to Saveetha School of Law and it is relevant to extract the same:

"Fee Structure

The candidates once selected for admission should pay the following fees at the time of Admission and therefore in the month of May every year. The fees once paid will not be refunded. In case the candidate wants to discontinue/withdraw during the middle of the course, he/she has to pay the entire course fee (for five years) before discontinuing.

Apart from the tuition fee, the following has to be paid at the time of admission:

The prospectus stipulates that the fees once paid will not be refunded and in case if a candidate wants to discontinue/withdraw during the middle of the course, he/she has to pay the entire course fee (for five years) before discontinuing.

18. In *Kesavan v. Director of Medical Education, Kilpauk, Chennai-600 010* and another [(2011) 8 MLJ 454], the petitioner joined BDS course at Tamil Nadu Government Dental College, Chennai during the academic year 2000-2009 and subsequently, discontinued the studies and requested the respondents therein to return the transfer certificate and his +2 mark sheet, so that he can secure employment and since it was not considered, filed the writ petition. The official respondents took a stand that since he has executed an agreement to pay a sum of Rs. 2,00,000/- in the event of discontinuation, he was asked to pay the same and unless and until the said amount is paid, the certificates could not be returned. The learned Judge has taken note of the fact that there is no clause in the bond that the respondents could retain the certificates until the payment is made and held that for not paying the amount, they could at the most take recovery proceedings against the petitioner based on the bond and consequently, issued directions for return of the certificates.

19. Similar view has also been taken in the (i) Order dated 10.07.2012 made in Crl.O.P. No. 9920/2012 [*A. John Paul and two others v. State and another*]; (ii) Order dated 18.12.2012 made in W.P.(MD). No. 14394 of 2012 [*S. Muthulakshmi v. The Director of Technical Education, Anna University, Chennai and others*] and in the (iii) Order dated 05.11.2014 made in W.P. Nos. 27809 to 27811 and 27973 to 27975 of 2014 [*D. Vinoth Kumar and Others v. The Principal Secretary to Government of Tamil Nadu and others*]. The Madhya Pradesh High Court also, in the order dated 06.08.2014 made in W.P. No. 12778/2013 [*Vikrant Chourasiya v. State of M.P. and others*] has held that there are no statutory rules, regulations or scheme which permit the institute to retain the documents.

20. In the considered opinion of the Court, the above cited decisions are fully applicable to the facts of this case and the ratio laid down in the said decisions is also in consonance with common sense and logic. Even as per the prospectus of the respondent College, the fees once paid will not be refunded and in case the candidate wants to discontinue/withdraw during the middle of the course, he/she has to pay the entire course fee (for five years) before discontinuing. The petitioner executed affidavit of undertaking stating among other things that in case of discontinuation of the course in the middle of any reason, he promises to

pay the remaining entire course fees and his father has also counter signed the said affidavit of undertaking and stood as the guarantor for the affidavit of undertaking. It is pertinent to point out at this juncture that even in the said affidavit of undertaking, no promise/undertaking has been given by the petitioner to the effect that unless and until he pays the entire course fees, he is not entitled to get the certificates. Therefore, there is no clause either in the prospectus or in the affidavit of undertaking dated Nil executed by the petitioner, counter signed by his father, to the effect that the certificates cannot be returned unless and until the entire course fees is paid.

21. In the light of the reasons assigned above, the respondent is directed to return the original testimonials/certificates collected from the petitioner at the time of admission to B.B.A., B.L.(Hons.) course for the academic year 2014-2015 along with the Transfer Certificate and Character Certificate to the petitioner within a period of two weeks from the date of receipt of a copy of this order and the respondent is also at liberty to initiate appropriate legal proceedings to recover the sums/fees from the petitioner and also from his father.

22. In the result, the Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.