(2015) 01 MAD CK 0330

In the Madras High Court

Case No : Writ Petition (MD) Nos. 13993 to 13995 and 15058 of 2012 and M.P. Nos. 1 + 1 + 1 + 1 of 2012 and 1 + 1 of 2014

Shanmuga Arts Science and Technology Research Academy APPELLANT

Vs

The District Consumer Disputes Redressal Forum and Others RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:
Constitution of India, 1950 — Article 141, 226, 227

Citation : (2015) 01 MAD CK 0330

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : K.K. Senthil for G.R. Associates, for the Appellant; G. Muthukannan, GA, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.B.K. Vasuki, J.—All the writ petitions are filed to quash the proceedings in CC Nos. 31, 32, 33 and 48 of 2012 pending on the file of the District Consumer Disputes Redressal Forum, Thanjavur against the petitioner herein, arising out of the complaint filed by the third respondent student in each of the writ petitions.

2. The circumstances under which the third respondent in each of writ petitions come forward with the respective complaint against the petitioner institution are as follows : The respective third respondent in WP. No. 13993 to 13995/2012 were admitted to B.Tech course in ECE Stream in the petitioner University between 21.6.2010 and 2.7.2010 on payment of Rs. 52,000/- as initial fees. They completed first two semesters. After the classes were commenced during second year, they wanted to leave from the petitioner University for joining some other college. For that purpose, they sought for transfer certificate. The petitioner University as per the specific clause contained in the application, issued transfer certificate and returned other certificates on payment of fee for entire course to the tune of Rs. 1,77,000/-. Thereafter, the third respondent demanded refund of the fee amount remitted by them. On their failure of the

petitioner University to do so, the third respondent through the second respondent, made the complaint before the first respondent, seeking various reliefs of refund of amount paid by way of tuition fees, punitive damages and compensation.

Insofar as the third respondent in WP.15085/2012 is concerned, he was admitted in B.Tech course in EEE stream on 17.7.2012 on payment of Rs. 57,000/- as fees. The classes were commenced from 18.7.2012. The third respondent, after having attended the classes for more than a month and after the closure date for making admission, wanted to discontinue the course as he got admission in some other college and requested for transfer certificate on 21.8.2012. The petitioner University as per the specific clause contained in the application, refused to issue transfer certificate, without remitting the balance fee for entire course. On their refusal to do so, the complaint came to be filed before the first respondent, for refund of tuition fees already paid and for damages and compensation and also return of the original certificates.

3. The issue raised in all the complaints by the students is that the petitioner University is not authorised to collect entire course fee from the student, who discontinue his studies in the mid stream and the failure to return the certificate by demanding entire course fee is illegal and against the legal pronouncement made by the Apex Court and National Consumer Disputes Redressal Commission, New Delhi and also against the circular issued by UGC.

4. The petitioner University has come forward with these writ petitions seeking to quash the complaints pending on the file of the first respondent Forum on the grounds that the first respondent has no jurisdiction to entertain the complaints against the well settled legal principles and the present proceedings pending against the petitioner is hence nothing but an abuse of process of law.

5. The Secretary of the Consumer Protection Council on behalf of the respondents 2 and 3 seriously opposed the relief sought for herein by questioning the maintainability of the writ petitions and by relying on the principles laid down by the Apex Court and National Consumer Disputes Redressal Commission, New Delhi. The Secretary of the second respondent would reiterate the same ground as raised before the first respondent Forum that the petitioner University has no authority to collect the entire fee and to retain the certificates by demanding entire course fee.

6. Both the petitioners as well as the respondents 2 and 3 have also, in support of their respective contentions, cited the judgments of the Apex Court and our High court and the order passed by the National Consumer Disputes Redressal Commission, New Delhi.

7. Heard the rival submissions made on both sides and perused the materials placed before this Court.

8. Before going into the relief sought for herein on merits and on facts, the first

issue to be considered herein is the maintainability of the writ petitions. According to the learned counsel for the petitioner, the orders and proceedings of a judicial court subordinate to the High Court are amenable to writ jurisdiction of the High Court under Article 226 of the Constitution and Writ of Certiorari under Article 226 of the Constitution can be issued for correcting gross errors of jurisdiction i.e., when a subordinate court is found to have acted (i)without jurisdiction - by assuming jurisdiction where there exists none, or (ii)in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii)acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, thereby occasioning failure of justice. The learned counsel for the petitioner in support of such contention, relied on the following judgments: (i) State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others, AIR 2003 SC 1043 : (2003) 95 CLT 445 : (2003) 113 CompCas 536 : (2004) 1 CompLJ 321 : (2003) 1 CTC 409 : (2003) 96 FLR 743 : (2003) 1 JT 344 : (2003) 1 SCALE 309 : (2003) 2 SCC 412 : (2003) 1 SCR 397 : (2003) 1 UJ 420 ; and (ii) Surya Dev Rai Vs. Ram Chander Rai and Others, AIR 2003 SC 3044 : (2003) 4 CTC 48 : (2003) 6 SCALE 133 : (2003) 6 SCC 675 : (2003) 2 SCR 290 Supp : (2003) WritLR 722 : (2003) AIRSCW 3872 : (2003) 6 Supreme 390 .

9. On other hand, the learned counsel for the second respondent relying on the following authorities, contended that when an alternative efficacious remedy by way of appeal or revision is available to the person if aggrieved, supervisory jurisdiction may be refused to be exercised: (i) Punjab National Bank Vs. O.C. Krishnan and Others, (2001) 6 AD 207 : AIR 2001 SC 3208 : (2001) 2 BC 642 : (2001) 107 CompCas 20 : (2001) 4 CompLJ 179 : (2001) 6 JT 408 : (2001) 5 SCALE 196 : (2001) 6 SCC 569 : (2001) 2 UJ 1491 : (2001) AIRSCW 2993 : (2001) 6 Supreme 81 ; (ii) Surya Dev Rai Vs. Ram Chander Rai and Others, AIR 2003 SC 3044 : (2003) 4 CTC 48 : (2003) 6 SCALE 133 : (2003) 6 SCC 675 : (2003) 2 SCR 290 Supp : (2003) WritLR 722 : (2003) AIRSCW 3872 : (2003) 6 Supreme 390 ; (iii) Cicily Kallarackal Vs. Vehicle Factory, (2012) 6 CTC 217 : (2012) 7 JT 426 : (2013) 169 PLR 571 : (2012) 4 RCR(Civil) 901 : (2012) 7 SCALE 328 : (2012) 8 SCC 524 and (iv) Cox and Kings (I) Ltd. Vs. Raj Kumar Mittal and Another and Others, (2009) 156 DLT 467 .

10. It is true that in the decisions cited on the side of the respondents, the Hon''ble Supreme Court and Delhi High court are of the view that when there is an alternative remedy available to the person if aggrieved, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India and the same amounts to improper exercise of jurisdiction; and it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the lower forum, as a statutory appeal is provided and lies to the Supreme Court.

11. This Court is bound by the principles so laid down above. However, the same are not applicable to the facts of the present case, wherein, what is challenged before this court is not any order passed by the first respondent forum, but very maintainability of the proceedings before the first respondent forum. As the same is challenged on the ground of want of jurisdiction, the same is covered by the law laid down by the Supreme Court in Surya Dev Rai''s case, wherein, the Apex Court referring to the views of the Constitution Bench and three Judges Bench of the Supreme Court in the following judgments held (i) T.C. Basappa Vs. T. Nagappa and Another, AIR 1954 SC 440 : (1955) 1 SCR 250 (ii) Province of Bombay Vs. Kusaldas S. Advani and Others, AIR 1950 SC 222 : (1950) 1 SCR 621 and (iii) Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, AIR 1966 SC 81 : (1965) 57 ITR 349 : (1965) 3 SCR 536 in no uncertain terms that a writ of certiorari can be issued against the acts or proceedings of a judicial or quasi judicial body conferred with power to determine questions affecting the rights of subjects and obliged to act judicially: The Hon''ble Supreme Court has also in the same judgment, referred to other judgments of the Apex Court, which dealt with the exercise of original jurisdiction of the High court and supervisory jurisdiction and the circumstances under which and the forum against whom the same can be exercised. The Apex Court, after due analysis of all the cases and the principles laid down therein, has gone to the extent of saying that the writ of certiorari can be directed against the act, order or proceedings of the subordinate court and it can be issued even if the lis is between two private parties and one of the 9 principles laid down in the same decision is that Certiorari under Article 226 of the Constitution can be issued for correcting gross errors of jurisdiction ie., when a subordinate court is found to have acted (i) without jurisdiction -by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified thereby occasioning failure of justice.

12. That being the legal position, the objection regarding maintainability of the writ petitions for the issuance of writ of Certiorari to call for the records relating to the complaints pending before the first respondent forum and to quash the same on the jurisdiction issue, is hence legally untenable and is liable to be negatived.

13. Before going into the facts of the case on merits, it is useful to quote the principles laid down by the Apex Court and our High court and the National Consumer Disputes Redressal Commission, New Delhi. The Constitution Bench of the Apex Court in the judgment reported in Islamic Academy of Education and Another Vs. State of Karnataka and Others, AIR 2003 SC 3724 : (2003) 3 CTC 719 : (2003) 6 SCALE 325 : (2004) 13 SCC 3 : (2003) 6 SCC 697 : (2003) 2 SCR 474 Supp : (2003) AIRSCW 4240 : (2003) 6 Supreme 303 , has observed that insofar as the institutions imparting professional education are concerned, having regard to the public interest, they are bound to maintain excellence in

standard of education and the width of the rights and limitations thereof of unaided institutions whether run by a majority or a minority must conform to the maintenance of excellence. With a view to achieve the said goal indisputably, the regulations can be made by the State by ensuring orderly, efficient and sound administration and by preventing mal-administration. The Supreme Court has in the same judgment upheld the rights of the unaided institution to earn reasonable surplus for development of education and expansion of the institution, by getting profit out of their investments and not the professional institutions, which become auction houses for the purpose of selling seats. It is further observed that the committee constituted for fixing the fee structure is required to take into consideration the salary or remuneration paid to the members of the faculty and other staff, investment made by them, infrastructure provided and plan for future development of the institution as also expansion of the educational institution and future planning or improvement of facilities and investment in expensive devices or a powerful computer etc. After having observed so, it is laid down by the Supreme Court that the institutions shall charge fee only for one year in accordance with the rules and shall not charge the fees for the entire course and fees once fixed should not ordinarily be changed for a period of three years, unless there exists extra ordinary reason. However, if for some reason, fees have already been collected for a longer period the amount so collected shall be kept in a fixed deposit in a nationalised bank against which no loan or advance may be granted so that the interest accrued thereupon may enure to the benefit of the students concerned. Ordinarily, however, the management should insist for a bond from the concerned students.... If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution and the balance fees must be kept invested in fixed deposits in a nationalised bank. As and when the fees fall due for a semester/year, only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course, the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.

14. The Apex Court in the judgment reported in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, AIR 2003 SC 355 : (2002) 9 JT 1 : (2002) 8 SCC 481 held that private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance with conditions.

15. The Apex Court in the judgments reported in Ms. Neelu Arora and Another Vs. Union of India (UOI) and Others, AIR 2003 SC 1082 : (2003) 1 JT 447 : (2003) 1 SCALE 424 : (2003) 3 SCC 366 : (2003) 1 SCR 562 : (2003) AIRSCW 6158 : (2003) AIRSCW 609 by applying its earlier view in Medical Council of

India Vs. Madhu Singh and Others, AIR 2002 SC 3230 : (2002) 7 JT 1 : (2002) 6 SCALE 332 : (2002) 6 SCALE 162 : (2002) 7 SCC 258 : (2002) 2 SCR 228 Supp : (2002) 4 SCT 444 and in Supreet Batra and Others Vs. Union of India (UOI) and Others, AIR 2003 SC 1084 : (2003) 1 JT 519 : (2003) 1 SCALE 461 : (2003) 3 SCC 370 : (2003) 1 SCR 586 : (2003) 1 UJ 509 , ruled against the mid session admissions, even if seats are unfilled.

16. The Bombay High Court in the order dated 11.6.2012 made in WP. No. 2933 of 2011 (Amit Sadashiv Vaidya v. The Principal, K.C. College of Engineering Kopri, Thand and others), having regard to the rules, framed by the Directorate of Technical Education to the effect that no refund of fees except for the security of deposit can be granted, where a request for cancellation of admission is received before or after the start of the academic session as the seat cannot be filled by the institute is pleased to observe that the rules seek to balance on one hand, refund of tuition fees to students, who obtain more preferential allotments, with the rights of management as a result of the withdrawal by the petitioner from the seat allotted, the seat would remain vacant for a period of four years. Accordingly the Bombay High Court declined to grant the relief for refund of tuition fees already paid.

17. The Division Bench of Punjab and Haryana High Court has in the decision reported in Navdeep Singh Vs. I.I.T.T. College of Engineering and Others, (2003) 134 PLR 215 stated that it is settled law that provisions contained in the prospectus issued by the University are binding on the parties and the court cannot issue direction which may result in violation thereof.

18. The Punjab and Haryana High Court in the decision dated 9.5.2012 in CWP No. 1133 of 2011 (L.K. Talwar and another v. Lovely Professional University) held that if the seat consumed is still lying vacant, there is no question for refund of fees.

19. The Delhi High Court in the judgment reported in Kalka Inst. for Rese. and advance Studies and Another Vs. Hitesh Kumar and Others, (2006) 127 DLT 606 was of the opinion that since the petitioner has attended the classes for about one month and applied for withdrawal much after closure of admission, the fee was not refundable.

20. The Karnataka High Court has in the judgment reported in Sharifa B.T. Mohamed Ali Jinnaha Vs. The Vice Chancellor, Manipal Academy of Higher Education, The Asst. Director, International Admissions, Manipal Academy of Higher Education, The Dean, Kasturba Medical College and The Chairman, Medical Council of India, (2006) ILR (Kar) 2220 : (2006) 3 KarLJ 501 : (2006) 2 KCCR 101 SN held that once a candidate has declared and signed the condition/ rules and regulations of the University/College, such a candidate is not entitled to turn down the undertaking and redress the grievance contrary to the existing rules and regulations.

21. The Kerala High Court in the judgment dated 15.3.2011 made in

WP.29635/2004 (M. Shajila v. the University of Calicut and others) observed that the court will not be justified in compelling the management to refund the fee and special fee, if the discontinuance is after the closure of the admission and when the petitioner is not able to demonstrate that the seat vacated by her/him was filled up by admitting some other candidate.

22. In the following judgments, our High court has repeatedly held that if the student withdraws after the commencement of the classes with the seat remaining unfilled, the terms agreed upon at the time of admission is binding on the petitioner; the institution is right in collecting the fees from the petitioner and there is no illegality in such action; it is well settled law that the prospectus has force of law and that the institution as well as student is bound by the prospectus for admission. As per the prospectus that the fee already paid cannot be refunded and the parties are bound by the terms of the prospectus; and the institutions are bound by the public notice issued by the University Grants Commission : (i) WP (MD) No. 13041/2011 dated 7.2.2013 (B. Uthanda Harihara Sudhan v. The Registrar, Sasthra University, Thanjavur); (ii) WP(MD) No. 935 of 2008 dated 17.7.2008 (G. Maria Jeblin Lincy v. The Principal, Sun College of Engineering and Technology, Kanyakumari District and another); (iii) WP.21490/2007 dated 9.11.2010 (S.K. Sethuraman v. The Registrar, Sastra University; (iv) (2012) 4 MLJ 666 (R. Gowthami v. Regional Officer, All India Council for Technical Education, Chennai and others); and (v) WP. 2956/2008 dated 12.2.2013 (A. Arun v. The Registrar, Tamil Nadu Agricultural University, Coimbatore and others).

23. The Full Bench of National Consumer Disputes Redressal Commission, New Delhi in the decision reported in 1995 (3) CPR 467, (Homoeopathic Medical college and Hospital, Chandigarh v. Gunita Virk) held that fora constituted under the Consumer Protection Act have no jurisdiction to declare any rule in a prospectus of any institution providing for non-refund of tuition fee as unconscionable or illegal. If a student applies for admission and deposits the fees and later on, does not want to join the course, then the seat so vacated will remain vacant throughout the year. In such circumstances, it will become very difficult for any institution to run in a proper manner.

24. The National Consumer Disputes Redressal Commission (NCDRC), New Delhi, in the order made in Revision Petition No. 4464 of 2012 dated 31.5.2013 (Globsyn Business School v. Mayuri Ghosh), held that UGC circular was not applicable to unaided institutions. It is observed by NCDRC in the decision reported in I (2009) CPJ 10 (NC) (Apeejay Institute of Management and Information Technology v. Prashant Ashok) that refund cannot be claimed as per the undertaking signed by the guardian. In the order dated 31.3.2006 made in CC. No. 987 of 2004 (Manu v. Central Counselling Board and others) by the District Consumer Disputes Redressal Forum-II, UT, Chandigarh, the petitioner herein is the second respondent therein. It is held therein that as the student left the course of his own, after attending it for three days and as the University was

willing and ready to impart education, but the student was not interested, there was no ground for blaming the college for deficiency in service. In another decision by NCDRC reported in 1994 (3) CPJ 160 (Ramdeobaba Engineering College v. Sushant Yuvraj Rode and another), it is observed that as the student withdrew from the college to join another institute voluntarily, there was no deficiency in service on the part of the Engineering College and non-refund of admission fee is not a deficiency in service and admission fee is a consideration for admission and the service which the Engineering college was to render to the student in the matter of his pursuing studies in the college after admission and it is a quid pro quo for such service. NCDRC in the case of FIIT JEE Ltd. v. Sajjan Kumar Gupta vide order dated 21.5.2014 in Revision Petition No. 4476 of 2013 held that there was no deficiency in service or negligence in duty in any manner and as the institution charged the infrastructure cost fee and admission fee and 10% of the tuition fees from the student, there is no jurisdiction for the refund of fees, if the student has left the course mid stream. It is held so, by following the observations of the Hon''ble Supreme Court in the case of Islamic Academy of Education v. State of Karnataka (cited supra) that an institute is not debarred from collecting the entire fees in advance and it has not been stated anywhere that a student is entitled to get refund, if he leaves the course midstream.

25. Whereas, the Secretary of the second respondent has in support of his contention that the student is entitled for refund of money for the period, they had not attended the college/institution, as per the public notice issued by UGC, cited the orders of National Consumer Disputes Redressal Commission in (i) 1986 - 2009 CONSUMER 15848 (NS) (Sehgal School of Competition v. Shri Dalbir Singh); (ii) 1986 - 2009 CONSUMER 16192 (NS) (Registrar, G.G.S. Indraprastha University, Delhi v. Vaibhav); (iii) 1986-2002 Consumer 5207 (NS) (Bhupesh Khurana and others v. Vishwa Buddha Parishad and others); (iv) Revision Petition No. 1668 of 2012 dated 23.4.2013 (Birla Institute of Technology and Science, Pilani and others v. Abhishek Mengi); (v)Revision Petition No. 3432 of 2009 dated 10.11.2010 (Shrei Saravpreet Singh v. The Principal, Lala Lajpat Rai Institute of Engineering and Technology, Moga, Punjab and another); (vi)Revision Petition Nos. 347 and 350 of 2012 dated 25.5.2012 (Ganpati College of Engineering for Girls v. Shivani and another) and the decision of Delhi State Consumer Disputes Redressal Commission, New Delhi reported in 2012 (1) CPR 285 (Guru Gobind Singh Indraprastha University v. Disha Jain). In all these cases, the National as well as State Consumer Disputes Redressal Commission upheld the orders for refund of course fee already paid.

26. The learned counsel for the respondents has in support of his contention, also relied on the following decisions. In the order dated 26.11.2009 made in WP. No. 19908 of 2009 (M. Sumer v. The Chairman, PMR Institute of Technology, Chennai and others), the then learned brother Judge of this court K. Chandru, J. observed that if at all it can only be a civil liability, which the institution will have to establish before the appropriate civil court and cannot take the law into their own hands by holding the Transfer certificate as ransom and thus ruin the life of

an young student.

27. The Punjab and Haryana High Court in the order dated 21.7.2010 made in Civil W.P. No. 13308 of 2009 (Sh. Atam Parkash Khatter v. Commissioner and Secretary and another to Government of Haryana and others), observed that Education Institution cannot act like commercial establishment and there is no justification on the part of the institution in retaining the substantial fee paid by a student, who decides not to pursue his/her studies in the said institution.

28. The Punjab and Haryana High Court in another decision reported in Prabhjot Singh Vs. Punjab University and Others, AIR 2010 P&H 28 : (2010) 1 SLR 424 , held that in view of the instructions of the AICTE and UGC, the respondent University was duty bound to refund the fee, if the student has withdrawn before the commencement of the course.

29. In the decision reported in (2002) 10 SCC 487 (Ramdeo Baba Kamala Nehru Engineering College and others v. Sanjay Kumar and others), the Hon''ble Supreme Court has held that in the event of cancellation of admission at the behest of either party, money ought to be refunded, subject to deductions.

30. As far as the orders passed by the NCDRC or State Consumer Disputes Redressal Commission cited on the side of the respondents are concerned, the same are not binding on this court, in view of the principle laid down by this court in the judgment reported in Arun Balakrishnan Iyer and Another Vs. Soni Hospital and Others, AIR 2003 Mad 389 , wherein it is clearly held that the orders passed by the District Consumer Redressal Forum or State Commission or National Commission functioning under the Consumer Protection Act are not binding precedents and such decisions cannot be relied or referred before this court or before any subordinate court as precedents and those decisions are not judgments but only orders. Under Article 141 of the Constitution of India, the judgments rendered by the Supreme Court are binding on all. Further, the judgment of the High Courts are binding precedents on the court over which the High court exercises supervisory and revisional powers under Article 227 of the Constitution of India.....Only the ratio decidendi in the decisions of the higher courts, viz., the Supreme Court and the High Courts are binding precedents. Therefore, the decisions of the Consumer Disputes Redressal including the State commission and the National Commission are not binding precedents on the courts....... Therefore, the decisions of the State Commission or National Commission constituted under the Consumer Protection Act are not judgments laying down a ratio decidendi, as such, the decisions of the National and State Consumer Disputes Redressal Commission cited on the side of the respondents to uphold the order of refund, are in no way helpful to the respondents 2 and 3.

31. It may be true that the learned brother Judge of our High Court and Punjab and Haryana High court have in the decisions above cited held that the student is entitled for refund of course fee deposited and the certificate cannot be withheld as ransom. However, other judgments of the Supreme Court, our High Court and

other High Courts cited on the side of the petitioner, which are in favour of the petitioner University, would squarely apply to the facts of the present case for the following reasons.

32. As already referred to, in Islamic Academy of Education v. State of Karnataka''s case, the Supreme Court has not decided against the collection of entire course fee at the time of admission. It is only stated that if entire fee is collected in advance, one year fee alone will be used by the institution and balance amount will be kept invested in fixed deposit in a nationalised bank and the interest accrued thereon shall be refunded to the student at the end of the course. It is further stated in the same decision that the institution is authorised to require the student to furnish a bond/bank guarantee that the balance fees for the whole course would be received by the institution even if the student left in midstream. That means, the bank guarantee so obtained will be enforceable for collection of balance whole course fee, in the event of the student left in midstream. It is nowhere stated in the decision that the student, who left in midstream is not liable to pay whole course fee, when the vacant seat so caused remain unfilled. It is clearly laid down in the authorities cited on the side of the petitioner that the student who leaves the college after the commencement of the course and after the closure of date of admission, is not entitled for refund of the fees already paid and is liable to pay the balance fees for all the semesters.

33. As far as the third respondent in WP. Nos. 13993 to 13995 of 2012 are concerned, they left the college, after commencement of the course in the second year. By that time, the last date for admission through later entry was over and the seats remained unfilled. As far as the third respondent in WP. No. 15058/2012 is concerned, he left the college, after commencement of the course in the first year and after the closure of the admission. The students, who left the college in the second year, were asked to pay the balance fees for the entire course, whereas the student, who left the college, after attending the classes in the first year, was asked to pay the fee for the second semester. It is demanded so, in view of the specific clause contained in the application form and in view of the undertaking given by the parent/guardian and in view of refund policy of the institution. It is not in dispute that one of the specific clauses in the General Instructions appended to the application form is that fees once paid will not be refunded under any circumstances and the candidate should pay the entire programme fee minus whatever has been already paid, if he/she discontinues the programme any time after its commencement. At the end of the General instructions, the applicant and parent/guardian, after having accepted the same, are required to execute a joint declaration to the effect that they are fully aware of the general instructions and are bound by the same and agreed to the above conditions. In both set of cases, the students discontinued the course, after commencement of the course in the first year as well as in the second year, resulting in vacant seat which remained unfilled for the entire course period. If that is so, the parties are bound by the conditions and the general instructions prevailed over UGC guidelines or any other rule framed by AICTE.

34. The Constitution Bench of NCDRC has in the case of Homoeopathic Medical College and Hospital, Chandigarh v. Miss Gunita Virk reported in 1995 (3) CPR 467 held that fora constituted under the Consumer Protection Act have no jurisdiction to declare any rule in a prospectus of any institution providing for non-refund of tuition fee as unconscionable or illegal and such ruling of NCDRC is undoubtedly binding on the State and District Consumer Disputes Redressal Commissions. The learned brother Judges of our High court have in A. Arun v. the Registrar, Tamil Nadu Agricultural University, Madras''s case in WP. No. 2956 of 2008, held that instruction and public notice of AICTE cannot override the provisions of prospectus issued for admissions; In the order dated 9.11.2010 made in WP. No. 21490 of 2007 (S.K. Sethuraman v. Sastra University) it is clearly held that as per the prospectus, the fee already paid cannot be refunded and the parties are bound by the terms of the prospectus. In the decision reported in (2012) 4 MLJ 666 (R. Gowthami v. Regional Officer) it is clearly observed that as the petitioner had paid the fees without any protest and got the Transfer certificate from the college, she is estopped from claiming the refund of the said sum. In other case of G. Maria Jeblin Lincy v. Principal, Sun college of Engineering and Technology, Kanyakumari and another, decided by then learned Sister Judge K. Suguna, the claim for refund of fee was rejected. It is pointed out therein that neither basing on the circular dated 5.7.2007 issued by the Anna University nor as per the public notice dated 23.4.2007 issued by the University Grants Commission, the petitioner is entitled for the refund of the amount paid by her and when the University Grants Commission has issued a specific circular in this regard, only if the seat which falls vacant due to the discontinuation of a particular student is filled by other candidates, the amount will be refunded. That being so, the claim of the third respondent/students in WP.13993 to 13995 of 2012 in view of the well settled position of law, is legally unsustainable.

35. Similar reasoning is applicable to the case of the third respondent in WP.15058/2012, who left the college after the course was commenced and after the date of admission was over. In that event, the student is liable to pay the second semester fee as demanded by the petitioner University, which remained unfilled. It is relevant at this juncture, to recollect the observation of the Hon''ble Supreme Court in Islamic Academy of Education v. State of Karnataka''s case (cited supra) that the institution is entitled to have reasonable surplus for development of education and expansion of the institution and reasonable surplus doctrine can be given effect to only if the institutions make profits out of their investments. While doing so, they cannot be made to suffer loss due to no fault on their part or due to discontinuance of the course by the student on his own or due to no fault on the part of the University. It is nobody''s case that the petitioner University is deficiency in service and is not willing and ready to impart education to the students, who opted other college and chose to leave the petitioner college for their betterment. Further having found that the specific contention of the petitioner University that the seats consumed by the third respondent students remain unfilled, is no where denied by the respondent 2 and

3, it is further held that the petitioner University cannot be penalised for the same.

36. When that being the legal and factual position, the National Consumer Disputes Redressal commission is bound by the legal principles laid down by the Apex Court and our High Court and other High courts in the matter of refund of college fee already paid to the students and in the matter of payment of balance fee by the students who left the college in midstream. When the five member Bench of NCDRC held that the forum cannot go into the question whether the refund policy is constitutional or not, the same is binding on the first respondent. If that is so, the first respondent cannot either go into legality and enforceability of the specific clause contained in the application form or reservation policy of the unaided institution, which is prevailing over the UGC letter. The first respondent is also bound by the legal principles laid down by this court. In such circumstances, the issue involved in the complaint, which is already decided by the higher forum, cannot be re-agitated before the first respondent. In the event of the same being allowed to continue, the same amounts to abuse of process of law as there is no chance of the complainant succeeding in their pursuit.

37. At this juncture, it is noteworthy to refer the decision of the Hon''ble Supreme Court in the case of K.K. Modi v. K.N. Modi and others reported in Indian Kanoon-http://indiankanoon.org/doc/1777887, wherein, the Apex court held that frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts'' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding. While observing so, the Apex Court has at page 12 of its judgment referred to the Supreme Court practice 1995 published by Sweet and Maxwell in paragraph 18/19/33 (page 344) which explains the phrase "abuse of the process of the court" thus: This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.

38. Thus, for the discussions held above, the petitioner being unaided institution, is entitled to claim full fee either for the entire course or for the particular year, as the case may be, when the students left the college in the mid stream, as such, the grievance raised by the students in the impugned complaints, does not make out any prima facie case against the petitioner University to subject the same to face the ordeal of trial. When the complaints are both legally and factually unsustainable, the same cannot be, in the interest of justice allowed to go on, so as to cause serious prejudice to the petitioner University amounting to

abuse of process of law and the complaints are hence liable to be quashed.

39. In the result, all the writ petitions are allowed and the proceedings in CC Nos. 31, 32, 33 and 48 of 2012 pending on the file of the District Consumer Disputes Redressal Forum, Thanjavur stand quashed. The third respondent in WP. No. 15058 of 2012 by name Srinivasa Murthy Cherukupally is directed to pay the second semester fee and the petitioner is directed to hand over the certificates to the third respondent within three days from the date of receipt of payment of second semester fee. No costs. Consequently, connected miscellaneous petitions are closed.

