

(2014) 12 KL CK 0171

In the High Court Of Kerala

Case No : W.P. (C) Nos. 22815 and 23529 of 2014

Sruthi P. and Others

APPELLANT

Vs

Government of Kerala and Others

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Citation : (2015) 1 ILR 519

Hon'ble Judges : P.D. Rajan, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : Joby Jacob Pullickekudy and Anil George, Advocates for the Appellant; Roshan D. Alexander, Senior Government Pleader, Advocates for the Respondent

Judgement

K.T. Sankaran, J.—The petitioners were admitted to the 50% Government quota seats for M.B.B.S. at Dr. Somarvell Memorial CSI Medical College (hereinafter referred to as the "College"), Karakonam in the academic year 2013-2014. The College is a Private Self Financing Medical College. The College management entered into an agreement with the Government for seat sharing and for fixation of fee. In terms of that agreement, Government issued G.O.(Rt.) No. 2382/2013/H & FWD dated 4-7-2013 (Ext. P-1). As per Ext. P-1, the tuition fee payable by all the students other than NRI students shall be Rs. 4,00,000 per annum. Clause 19 of Ext. P-1 provides that both parties to the Consensual Agreement shall place the agreement before the Fee Regulatory Committee and file the same for approval and ratification of the Admission Supervisory Committee. There is no dispute that the Consensual Agreement was approved as provided in clause 19. Petitioners joined the College and paid the fee for the first academic year.

2. For the academic year 2014-2015, the College management entered into an agreement with the Government for seat sharing and fixation of fee. Based on that agreement, the Government issued GO. (Rt.) No. 2294/2014/H & FWD dated 7-7-2014 (Ext. P-2). As per Ext. P-2, 50% of the seats in the College shall be reserved for Government merit quota. The candidates under the Government

merit quota, except the students belonging to Scheduled Castes and Scheduled Tribes and other reserved categories, are bound to pay annual tuition fee at the rate of Rs. 1,75,000. In the 35% of the seats earmarked for management quota, the fee that can be collected from the students is up to Rs. 8,00,000 per annum per student. In addition, the management would be entitled to collect Rs. 7,00,000 from each student as interest fee deposit. The fee fixed for students in NRI quota is Rs. 11,50,000 annually. Clause 14 of Ext. P-2 provides for submission of the Consensual Agreement before the Admission Supervisory Committee and Fee Regulatory Committee constituted by the State for post facto approval. Clause 15 of Ext. P-2 provides thus:

"The Management shall be entitled to collect uniform tuition fees not more than Rs. 4,00,000 (Rupees Four Lakhs only) excluding those admitted under NRI quota in the event of this Consensual Agreement is not approved as stipulated in Clause 14 above and not operative in its entirety or the Consensual Agreement or the fee structure mentioned in Clause 5 & 8 above are declared to be void or not enforceable by the Courts or any authority competent to declare so."

The Consensual Agreement for the academic year 2014-2015 was approved by the Administration Supervisory Committee and Fee Regulatory Committee. The candidates were admitted to the College and from the students admitted to the 35% management quota, fee at the rate of Rs. 8,00,000 was collected. From the candidates admitted in the Government quota, fee was collected at the rate of Rs. 1,75,000.

3. The grievance of the petitioners is that though the parents of M.B.B.S. students admitted in 2013-14 in the Government quota submitted Ext. P-3 representation dated 23-8-2014 to the Director of the College requesting to reduce the existing fee of Rs. 4,00,000 to Rs. 1,75,000 at par with the new entrants, there was no response to Ext. P-3 representation.

4. The petitioners contended that the candidates admitted to M.B.B.S. Course in 2013-2014 in the Government quota seats were discriminated against the candidates admitted in the same College under the same quota for the academic year 2014-2015. For 2013-14 batch, the candidates were compelled to pay Rs. 4,00,000 per annum whereas the next batch students need to pay only Rs. 1,75,000 per annum. According to the petitioners, this would amount to discrimination and therefore the relevant clause in Ext. P-1 is liable to be quashed. The reliefs prayed for in W.P. (C) No. 22815 of 2014 are the following:

"(i) to call for the entire records leading to Exhibits P-1 and P-2 and quash the condition imposed in clause 7 in Exhibit P-1 by the issuance of a writ in the nature of certiorari or any other appropriate writ, direction or order.

(ii) to declare that the petitioners are discriminated by forcing them to pay a sum of Rs. 4 lakhs annual fee while other government merit quota students of 2014-15 are made liable to pay only at Rs. 1,75,000 annually

(iii) issue a writ of mandamus or any other appropriate writ order or direction commanding the respondents to collect annual tuition fee only at Rs. 1,75,000 and directing the 3rd respondent to return the excess fees collected during the academic year 2013-14 to the petitioners or appropriate the same for the next academic years.

(iv) to grant such other reliefs deemed fit and proper in the circumstances of the case and

(v) to award the cost of this petitioner in these proceedings."

Almost similar reliefs were made in W.P. (C) No. 23529 of 2014 as well.

5. The learned Government Pleader submitted that in clause 2.1.1(b) of the prospectus issued by the Commissioner for Entrance Examinations and which was approved by the Government, relating to the Kerala Engineering Agriculture Medical Entrance Examinations, 2013 provides that "those candidates who seek admission in private self financing colleges are bound to accept the conditions stipulated in the agreement between Government and Self Financing College Management(s) and deemed to have accepted such conditions".

6. The learned counsel for the petitioners submitted that students in the same college studying for the same course should not be made liable to pay different fees, particularly when they were admitted under the same quota. The argument is attractive on a first look. But on closer scrutiny, it can be seen that such an argument cannot be countenanced in view of the provisions in the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 (Act 19 of 2006) and the terms of Exts. P-1 and P-2 Government Orders passed on consensual agreement between the management and the Government. Section 6(5) of Act 19 of 2006 provides thus:

"6. Fee Regulatory Committee.-

(1) * * * * *

(2) * * * * *

(3) * * * * *

(4) * * * * *

(5) The fee determined by the Committee shall be binding on the unaided professional college or institution for a period of three years. The fee so determined shall be applicable to a candidate who is admitted to a college or institution in that academic year and shall not be revised till the completion of his course in the said college or institution. No unaided professional college or institution shall collect a fee amounting to more than one year's fee from a candidate in an academic year. Collection of more than one year's fee in an

academic year shall be construed as collecting of capitation fee and shall be liable to be proceeded against."

Sub-section (8) of Section 6 of the Act provides that Fee Regulatory Committee shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions. The Committee shall have the powers of a Civil Court under the Code of Civil Procedure while trying a suit in respect of the matters enumerated in clause (a) to (d) of Section 6(8). Sub-section (2) of Section 6 provides that Fee Regulatory Committee shall adopt its own procedure for the conduct of its business. Going by the Scheme of Act 19 of 2006, it could be seen that once the fee is determined by consensual agreement entered into between the Government and the management and approved by the Fee Regulatory Committee, it shall be the fee determined by the Committee. If so, it shall be binding on the unaided Professional College as well as the candidates who were admitted to a College or institution. Such fee shall not be revised till the completion of the course in so far as the candidates who got admission are concerned.

7. Clause 7 of Ext. P-1 which provides that "tuition fee payable by all the students other than NRI shall be Rs. 4,00,000 (Rupees Four Lakhs only) per annum" is also an indication that a candidate, who gets admission in a particular academic year has to remit the same fee for the academic years to come till the completion of the course. Clause 12 of Ext. P-1 is also relevant in this context, which reads as follows:

"12. The College can retain the tuition fee remitted by the student, in the event the student admitted under the Management quota or Government quota, discontinues his/her studies for any reason at any time after 20th September 2013. Further, in case, any student admitted to the College decides to cancel the admission for any reason whatsoever, the Educational Agency shall be entitled to collect the tuition fee of the entire course. However, in the event of the seat so falling vacant being filled up by a new candidate, the tuition fee collected as per this clause shall be refunded."

8. In view of clause 12 of Ext. P-1, if a candidate admitted to the College during a particular academic year cancels the admission, for any reason whatsoever, he would be made liable to pay the tuition fee for the entire course. For example, if a candidate admitted in 2013-2014 cancels the admission during the academic year, he will have to pay the tuition fee for the entire course at the rate of the tuition fee for the first year. That is an indication that a candidate admitted in a particular academic year is liable to pay fee at the same rate during the entire course and any change made in the quantum of fee in the subsequent years would not enure to the benefit of the candidate, who was admitted in the previous years. To put it in other words, a candidate admitted in 2013-2014 would not be bound to pay higher fee if the fee fixed for candidates in the same quota for 2014-2015 is higher. If the case of the petitioners is to be accepted, then it would necessarily mean that the petitioners would be liable to pay higher

fee in the subsequent years if the fee fixed for the batches of subsequent years is higher than the fee fixed for 2013-2014 during which year the petitioners were admitted. That is not what is contemplated by Section 6(5) and the terms of the Government Orders issued from time to time based on consensual agreements.

9. The question can be approached in another way. As per Ext. P-1, a uniform fee of Rs. 4,00,000 per candidate per year was fixed. As per Ext. P-2, fee of Rs. 1,75,000 was fixed for the students admitted in the 50% Government quota and Rs. 8,00,000 per year was fixed for the 35% candidates admitted in the management quota. A candidate admitted during 2014-2015 in the management quota is liable to pay Rs. 8,00,000 per year during the entire course, whereas a candidate admitted in any quota (other than NRI quota) during 2013-2014 would be liable to pay only Rs. 4,00,000 during the entire course. If the contention of the petitioners is to be accepted, the College Management would be entitled to collect Rs. 8,00,000 each from the candidates admitted to the 35% of the seats in management quota in the previous years. Since no such quota was earmarked during 2013-2014, a uniform fee was fixed for all the candidates except NRI for 2013-2014. If the candidates admitted to Government quota during 2013-2014 are allowed the benefit of the fee fixed for the said quota in 2014-2015, the management would be put to great loss and the very purpose of entering into a consensual agreement would be defeated. A consensual agreement is arrived at, as desired by the Government, in order to provide facility for the admission in the Government quota seats in private self-financing colleges concerned at a lesser fee rate, and that is intended to provide admission to the meritorious candidates belonging to lower financial strata. That purpose would be defeated if the contention put forward by the petitioners is accepted.

For the aforesaid reasons, we do not find any merit in the contentions put forward by the petitioners. The Writ Petitions are accordingly dismissed.

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