IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JANUARY 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE M.G.S.KAMAL

W.P. No.30619 OF 2018 (EDN-MED-ADM)

BETWEEN:

DR. VAIBHAV KHOSLA
AGED ABOUT 27 YEARS
S/O GHANSHYAM KHOSLA
158, PURANI DANA MANDI
BATALA-143505
GURDASPUR DISTRICT, PUNJAB
REPRESENTED BY HIS FATHER AND
POWER OF ATTORNEY HOLDER
GHANSHYAM KHOSLA.

... PETITIONER

(BY MR. AJOY KUMAR PATIL, ADV.,)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
ADDITIONAL CHIEF SECRETARY
HEALTH & FAMILY WELFARE
(MEDICAL EDUCATION DEPARTMENT)
VIKASA SOUDHA, DR. B.R. AMBEDKAR VEEDHI
BENGALURU-560001.

2. THE DIRECTORATE OF MEDICAL EDUCATION
IN KARNATAKA
ANAND RAO CIRCLE
BENGALURU-560 009
REPRESENTED BY ITS DIRECTOR.

3. KARNATAKA EXAMINATION AUTHORITY
SAMPIGE ROAD, 18TH CROSS
MALLESWARAM, BENGALURU-560012
REPRESENTED BY ITS EXECUTIVE DIRECTOR.

4. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES
4TH T BLOCK, JAYANAGAR
BENGALURU-560041
REPRESENTED BY ITS REGISTRAR.

5. RAJARAJESHWARI MEDICAL COLLEGE AND HOSPITAL
#202, KAMBIPURA MYSURU ROAD
BENGALURU-560074
REPRESENTED BY ITS DEAN.

6. MEDICAL COUNCIL OF INDIA
POCKET-14, SECTOR-8, DWARAKA
NEW DELHI-110077
REPRESENTED BY ITS SECRETARY.

... RESPONDENTS

(BY MR. LAXMI NARAYANA, AGA FOR R1 & R2
MR. N.K. RAMESH, ADV., FOR R3 & R4
MR. CHANDRAKANTH R. GOULAY, ADV., FOR R5
MR. N. KHETTY, ADV., FOR R6)

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THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT R-2, 3 AND 5 TO RETURN ALL THE ORIGINAL DOCUMENTS SUBMITTED BY THE PETITIOENR TO R-3 KEA AT THE TIME OF ISSUANCE OF THE ADMISSION ORDER DATED 16.5.2018 AT ANNEX-H.

DIRECT R-5 NOT TO INSIST ON PAYMENT OF THE TUITION FEE OF RS.25,32,000/- FOR THE ENTIRE DURATION OF THREE YEARS OF THE MD PSYCHIATRY COURSE AND RETURN ALL THE ORIGINAL DOCUMENTS OF THE PETITIONER IN ITS CUSTODY TO THE PETITIONER. DIRECT R-3 AND 5 TO REFUND THE FEE OF RS. 7,74,500/- COLLECTED FROM THE PETITIONR AT THE TIME OF ISSUANCE OF THE ADMISSION ORDER DATED 16.5.2018 AT ANNEX-H & ETC.

THIS W.P. COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, **ALOK ARADHE J.,** DELIVERED THE FOLLOWING:

ORDER

In this writ petition, the petitioner inter alia seeks a writ of mandamus directing respondent Nos.2, 3 & 5 to return the original documents submitted by the petitioner to Karnataka Examination Authority at the time of issuance of order of admission dated 16.05.2018 as well as a direction to respondent No.5 not to insist on payment of tuition fee of Rs.25,32,000/- for the entire duration of three years of MD Psychiatry course. The petitioner also seeks a writ of mandamus directing the Karnataka Examination Authority and respondent No.5 to refund the fee of Rs.7,74,500/- deposited by the petitioner at the time of admission to the aforesaid course on 16.05.2018.

2. Facts leading to filing of this petition, briefly stated are that the petitioner completed the MBBS course from Government Medical College, Amritsar in the State of Punjab and has been conferred the medical degree by the Baba Farid University of Health Sciences, Punjab. The petitioner appeared in the Post Graduate National eligibility cum Entrance Test, 2018. The petitioner was registered with Karnataka Examination Authority which is designated authority for conducting counseling for admission to P.G. Medical Courses in the State of Karnataka. The petitioner was not allotted any seat in the first and second round of counseling conducted by the Karnataka Examination Authority. The petitioner had also applied for admission to P.G.Medical Course in Baba Farid University of Health Sciences, Punjab. The candidature of the petitioner was not considered for admission. Therefore, he filed a writ petition before the High Court of Punjab and Haryana for a direction to the University to consider his case for admission to PG Medical course as per his ranking in P.G.NEET Examination, 2018.

3. In pursuance to the direction issued by the High Court of Punjab and Haryana, the petitioner was granted admission in Christian Medical College, Ludhiana in M.S.Orthopedics and was admitted to the course on 24.05.2018. The petitioner had also participated in the mop up round and counseling conducted by the Karnataka Examination Authority on 16.05.2018 and was allotted a seat in M.D.Psychiatry course in the college run by respondent No.5. The petitioner thereupon deposited a sum of Rs.7,74,500/- as well as all his original documents with Karnataka Examination Authority. However, subsequently, when the petitioner was admitted in the Christian Medical College, Ludhiana in MS Orthopedics Course, the petitioner immediately informed the Karnataka Examination Authority as well as the respondent No.5-College by an e-mail dated 29.05.2018 that he is surrendering his seat in MD Psychiatry Course in respondent No.5-Medical College. It is pertinent to note that the last date for counseling to the PG Course was 31.05.2018. The petitioner, thereafter, visited Bangalore and submitted a communication to respondent No.2 stating that he is surrendering the seat and requested for handing over

the original documents. The petitioner, thereafter, submitted a representation on 28.05.2018.

4. It is pertinent to mention here that the petitioner had surrendered his seat immediately prior to the last date of counseling and much before commencing of the Course. After the petitioner had surrendered the seat, the Karnataka Examination Authority had conducted another round of counseling on 30.05.2018. The respondent No.5 thereafter sent a communication dated 03.06.2018 to the petitioner to deposit a sum of R.25,32,000/-. In the aforesaid obtaining factual matrix, the petitioner has approached this court seeking the reliefs as stated supra.

5. Learned counsel for the petitioner while inviting the attention of this court by an interim order dated 24.04.2019 passed by Division Bench of this court fairly stated that in compliance of the aforesaid order, the original documents have already been returned to the petitioner and the petitioner has already given up the relief of refund of Rs.7,74,500/- which was deposited by the petitioner. It is further submitted that the respondent No.5 is not entitled to

seek the payments of the entire course fee for a period of three years from the petitioner as the petitioner had given up the seat much prior to the last date of counseling and much before the commencement of the course.

6. On the other hand, learned counsel for respondent No.5 submitted that if the original documents are returned to the petitioner, the right of the management to recover the fee for three years would not be frustrated. It is further admitted by learned counsel for respondent No.5 that after the petitioner had surrendered the seat, another round of counseling was held on 30.05.2018 by Karnataka Examination Authority. It is urged that since, the petitioner had not prosecuted the course, therefore, the respondent No.5 was deprived from admitting any person to the Course in question and therefore, is entitled to recover the course fee of entire three years course from the petitioner. In support of his submissions, learned counsel for respondent No.5 has placed reliance on division bench decision of this court dated 18.03.2014 in the case of ***MISS SMRUTHY B.S.***

VS. D.A.PANDU MEMORIAL R.V.DENTAL COLLEGE & HOSPITAL & OTHER.

7. We have considered the submissions made on both the sides and have perused the record. Para 8 of the decision of Supreme Court in ***ISLAMIC ACADEMY OF EDUCATION AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS', (2003) 6 SCC 697***, in para 8 is extracted below for the facility of reference:

> *It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e., for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester / year. 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. The balance fees must be kept invested in fixed deposits in a nationalized bank. As and when 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. The supreme court in the aforesaid decision held that the educational institution can only charge prescribed fees for one semester / year. 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.

8. Thus, it is evident that the institution has only a right to recover the prescribed fee for one semester / year. In the instant case, the petitioner has not left the course midstream. The petitioner has, admittedly, surrendered the seat on 24.05.2018, before the last date of counseling. It is also not in dispute that after the petitioner had surrendered the seat, another round of counseling was held on 30.05.2011 by the Karnataka Examination Authority. It is not the case of the Respondent No.5 that the petitioner has left the course midstream. Therefore, in view of the law laid down in ***ISLAMIC ACADEMY OF EDUCATION AND ANOTHER*** supra, the respondent No.5 has no right in law to demand the remaining course fee of three years course from the petitioner.

9. Admittedly, in compliance of the order dated 24.04.2019, the original documents have been returned to the petitioner. The interim order has already been given effect to. Therefore, the prayer for return or original documents does not survive. The petitioner has already given up the right to seek refund of Rs.7,74,500/- deposited by

him as is recorded in the aforesaid order sheet. Therefore, no orders are required to be passed with regard to prayer clause (c). Thus, for the aforementioned reasons, the writ petition is disposed of in terms indicated above.

Sd/-
JUDGE

Sd/-
JUDGE

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