

सदर याचिकेमध्ये द्वितीय वर्ष इंजिनियअरींग कोर्स सोडून एम.बी.बी.एस या कोर्ससाठी गेलेल्या विद्यार्थीनीने ट्रान्सफर सर्टीफीकेट महाविद्यालयाकडे मागितले. तेव्हा महाविद्यालयाने तृतीय वर्ष व चतुर्थ वर्षाची फी भरावी असे सदर विद्यार्थीनीला सांगितले त्याप्रमाणे कुठलाही विरोध न करता सदर विद्यार्थीनीने पैसे महाविद्यालयात भरले.

कुठलाही विरोध न करता पैसे भरल्यामुळे व नंतर पैसे मागितल्यामुळे सदर फी मागण्याचा अधिकार विद्यार्थीनीला नाही असे मा.उच्च न्यायालयाने आपल्या निकाल पत्रास म्हटलेले आहे.

सदर विद्यार्थीनीने शैक्षणिक कोर्स मध्येच सोडल्याने विना अनुदानित महाविद्यालयाचे आर्थिक नुकसान होते व त्याचा बोजा उर्वरीत विद्यार्थ्यांवर पडतो. तसेच ती जागा पुढील सर्व वर्षाकरीता रिकामी राहते तसेच एका विद्यार्थ्याची संधीही वाया जाते. यामुळे सदर याचिकेमध्ये द्वितीय व तृतीय वर्षाकरीता महाविद्यालयाने घेतलेली फी ही योग्यच आहे असा निर्वाळा मा.उच्च न्यायालयाने दिलेला आहे.

सदर याचिकेमधील अभियांत्रिकी महाविद्यालय हे विनाअनुदानित तत्वावर चालते, त्याला शासन कोणत्याही प्रकारे आर्थिक मदत देत नाही. त्यामुळे महाविद्यालयाची कृती योग्य असल्याचा निर्वाळा या याचिकेमध्ये मा.उच्च न्यायालयाने दिलेला आहे.

Madras High Court
Indian Kanoon - <http://indiankanoon.org/doc/105589049/>
Madras High Court
R.Gowthami vs The Regional Officer on 9 March, 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09/03/2012

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRA BAABU

W.P(MD)No.3977 of 2009

and

M.P(MD)No.1 of 2009

R.Gowtham

... Petitioner

Vs.

1. The Regional Officer,

All India Council for Technical Education,

Southern Regional Office,

Shastri Bhavan, 26, Haddows Road,

Nungambakkam,

Chennai - 600 006.

2. The principal Secretary/

Commissioner of Technical Education,

Department of Technical Education,

Chennai - 600 025.

3. The Registrar,

Anna University,

Sardar Patel Road,

Chennai.

4. Principal,

Mepco Schlenk Engineering College,

Sivakasi,

Virudhunagar District.

... Respondents

AO
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U Engg TSSO
24 FEB 2012
[Signature]

Prayer

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, to direct the forth respondent to refund a sum of Rs.1,87,550/- (One lakh eighty seven thousand five hundred and fifty only) paid by the petitioner towards tuition and other fees for 2nd, 3rd and 4th year with interest at the rate of 12% till the date of realization.

!For Petitioner ... Mr.D.Shanmugaraja Sethupathy ^For R1 and R2 ... Mr.B.Pugalendhi

Spl. Govt. Pleader

For R4 ... Mr.M.Mariappan

For R3 ... No appearance

: ORDER

In this writ petition the petitioner is seeking for a direction to the 4th respondent-college to refund a sum of Rs.1,87,550/- paid by the petitioner towards the tuition and other fees for 2nd, 3rd and 4th year with interest.

2. The case of the petitioner is that after completing the higher secondary course, she got admission at the 4th respondent-college in B.E. (Electrical and Electronic Engineering) course during the academic year 2007-2008. The petitioner had completed the first year course and she paid fees for the first year as required by the 4th respondent-college. She had also remitted a sum of Rs.81,550/- on various heads for the second year. While the petitioner was doing her second year, she got selected for M.B.B.S. course in the counselling conducted by the Directorate of Tamil Nadu Medical Education. Hence, the petitioner approached the 4th respondent and requested to issue the Transfer Certificate, so as to enable her to join M.B.B.S Course. The 4th respondent-college demanded fees towards the 3rd and 4th years also for issuing the Transfer Certificate. The petitioner having left with no other option, paid a sum of Rs.1,06,000/- on 03.10.2008 towards the course fees for 3rd and 4th years. Thereafter, the 4th respondent-college issued the Transfer Certificate to the petitioner. On verification from the Directorate of Technical Education under the Right to Information Act, the petitioner came to know that the 4th respondent-college is not entitled to demand fees for 3rd and 4th years also, when the petitioner discontinued the course in second year. Therefore, she made a request to the 4th respondent-college to refund the fees of Rs.1,06,000/- paid towards the 3rd and 4th year. As there was no response from the 4th respondent-college, further representation was sent to the first respondent on 20.01.2009, seeking for a direction to the 4th respondent to refund the excess tuition fees collected from the petitioner. In spite of the said representation given by the petitioner, the 4th respondent did not refund the fees collected from the petitioner towards the 3rd and 4th year. Therefore, the petitioner has filed the present writ petition.

3. Notice of motion was ordered by this Court on 25.11.2009. On notice, the respondents 1, 2 and 4 entered appearance through their respective counsels. The 4th respondent filed a counter affidavit and additional affidavit.

4. It is stated by the 4th respondent that the 4th respondent-college is a self financing institution and it has to run only on the tuition fees collected from the students. It is stated by the 4th respondent that a committee was constituted by the Government of Tamil Nadu for fixation of fees for private professional educational institutions and the said committee had also fixed the fees payable by the students admitted to the self financing engineering colleges, after taking into consideration of the financial difficulty in running the colleges and also after looking into the books of accounts and documents maintained by the colleges and also after hearing the representations of all concerned. Therefore, if any student leaves the institution in the middle of the II year, that seat will remain vacant and such vacancy will adversely affect the financial position of the college. It is also stated by the 4th respondent that the second respondent had issued a circular dated 17.06.2000 with regard to the refund of tuition fees to candidate, who leaves the college within two months of joining the course. In the case of the petitioner, she had studied the whole I year and almost completed the 3rd semester in the II year and left the college on 03.10.2008. In the meantime, the last date for lateral entry admission to second year B.E., course was also over by 18.07.2008, as fixed by the second respondent. Therefore, it is submitted by the 4th respondent that one seat was vacant through out the 3rd and 4th years of the course as the petitioner left the college on 03.10.2008. Therefore, according to the 4th respondent, collection of tuition fees for 3rd and 4th years from the petitioner is just and reasonable and the such collection is not illegal, as the college being the self financing institution has to run only on the tuition fees collected from the students.

5. The learned counsel appearing for the petitioner argued that the fees collected by the 4th respondent-college is not according with any norms and when the petitioner had left the college in the 2nd year, the 4th respondent-college is not entitled to collect the fees from the petitioner towards 3rd and 4th years also. The learned counsel for the petitioner also argued that the college is not a commercial establishment and therefore, they cannot be permitted to collect the fees for the period not attended by the students. It is also argued by the learned counsel for the petitioner that in the absence of any statutory provision empowering the college to retain the money even in respect of the period not attended by the students, the 4th respondent-college is not justified in collecting the fees from the petitioner towards the 3rd and 4th years. It is also argued by the learned counsel for the petitioner that in the absence of any contract to the contrary, the collection of the fees towards 3rd and 4th years are illegal. In support of his contention, he relied on decisions reported in (2002)10 SCC 487 in the matter Ramdeo Baba Kamala Nehru Engineering College vs. Sanjaykumar and (2011)8 MLJ 454 in the matter of Kesavan vs. Director of Medical Education.

6. on the other hand, the learned counsel appearing for the 4th respondent has argued that the college is a self financing institution and has to run only on the fees collected from the students. It is also argued by the learned counsel for the 4th respondent that the petitioner had completed the first year course and also almost completed the 3rd semester in the second year. When she left the college on 03.10.2008, the 4th respondent-college was not in a position to admit any student in that vacancy, as the last date for admission to the second year B.E., course through lateral entry system also was over by 18.07.2008. Therefore, the said vacancy of one seat was lying all throughout the 3rd and 4th years of the course and consequently, the college will have to suffer loss, if the said fees for the 3rd and 4th years is not collected from the petitioner.

7. Heard the learned counsels for the respective parties.

8. In this case, the petitioner joined the 4th respondent-college during the academic year 2007-2008 in B.E.(EEE) course. After attending the course for first year and the 3rd semester in the second year, the petitioner had left the college on 03.10.2008 to join M.B.B.S. course. When the petitioner sought for Transfer Certificate, the 4th respondent-college insisted for payment of fees towards the 3rd and 4th years also. It is seen that the said fees towards 3rd and 4th years were paid by the petitioner on 03.10.2008. It is not stated by the petitioner anywhere in the affidavit or in her representation dated 15.12.2008 and 20.01.2009 that the petitioner had paid the fees towards 3rd and 4th years under protest. Therefore, it should be treated that the said payment was made by the petitioner after accepting the demand made by the 4th respondent-college for issuing the Transfer Certificate. After making the payment towards the 3rd and 4th years without any protest, the petitioner had subsequently, made the claim for refund after some time based on certain information obtained from the Directorate of Technical Education. As the petitioner had paid the fees without any protest and got the Transfer Certificate from the 4th respondent-college, in my considered view, she is estopped from claiming the refund of the said sum even assuming that the college is not entitled to collect the said fee. Moreover, in this case, the petitioner had left the college during the 3rd semester on 03.10.2008, but in the meantime, the last date for admission under the lapsed seat through lateral entry was also over on 18.07.2008, as could be seen from the proceedings of the Commissioner of Technical Education, dated 25.06.2008. Consequently, the vacancy caused, due to the petitioner leaving the college of the 4th respondent, continued for the full course, namely, 3rd and 4th years also and therefore, the 4th respondent-college could not have been in a position to admit any other student in that vacancy. The 4th respondent-college is a self financing institution and is running only on the fees collected from the students. We must also see from their point of view that once a student is leaving in the middle of the course, the college will not be in a position to admit any student and consequently, the college undoubtedly will loose the revenue and in order to compensate such loss they have to collect the fees for the remaining years only from