



W.A.Nos.2310, 2313
& 2200 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.07.2023

Delivered on: 21.07.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

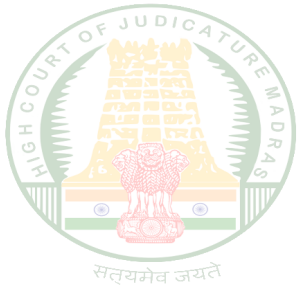
W.A.Nos.2310, 2313 & 2200 of 2021

[W.A.No.2310 of 2021]

1. The Registrar
Mahatma Gandhi Medical College
and Research Institute
Pondy – Cuddalore Main Road
Pillayarkuppam, Puducherry – 607 402.
2. The Dean
Mahatma Gandhi Medical College
and Research Institute
Pondy – Cuddalore Main Road
Pillayarkuppam, Puducherry – 607 402. .. Appellants

Vs.

1. D.Rajasree
2. N.Kirthiga Lakshmi
3. The Secretary General
Board of Governors, Medical Council of India
(Now known as National Medical Commission
represented by its Secretary
Pocket – 14, Sector – 8
Dwarka – Phase 1, New Delhi – 110 077.



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4. The Secretary
University Grants Commission
Bahadur Shah Zafar Marg
New Delhi – 110 002. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the common order dated 05.05.2021 in W.P.No.14388 of 2020.

[W.A.No.2313 of 2021]

1. The Registrar
Mahatma Gandhi Medical College
and Research Institute
Pondy – Cuddalore Main Road
Pillayarkuppam, Puducherry – 607 402. .. Appellant

Vs.

1. K.Vinod
2. M.Harshitha
3. P.Sudhakar
4. K.Nandhini
5. Shyam Kumar
6. Alagammai.K
7. Venkatesh Kumar.P

8. The Secretary General
Board of Governors, Medical Council of India
(Now known as National Medical Commission
represented by its Secretary
Pocket – 14, Sector – 8
Dwarka – Phase 1, New Delhi – 110 077.

9. The Secretary
University Grants Commission
Bahadur Shah Zafar Marg
New Delhi – 110 002. .. Respondents



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Prayer: Appeal filed under Clause 15 of the Letters Patent against the common order dated 05.05.2021 in W.P.No.7778 of 2020.

[W.A.No.2200 of 2021]

1. The Dean

Aarupadai Veedu Medical College & Hospital
Pondy Cudallore Main Road
Kirumampakkam
Puducherry – 607 402.

.. Appellant

Vs.

1. Chilukala Siva Narashimha Reddy
2. Euvalingam.D
3. Kamireddy Arun Kumar Reddy
4. Wadgaonkar Udit Rajendra
5. Duggirala Pujitha Chowdary
6. V.Priyadharshini Bala
7. Mallikarjun N.H
8. Poluru Thrivikrama Rao
9. Alpoor Tharun Tej

10. The Secretary General

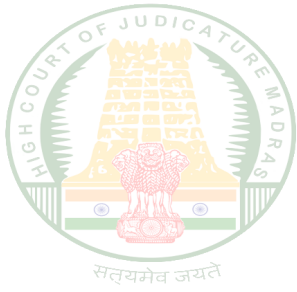
Board of Governors, Medical Council of India
(Now known as National Medical Commission
represented by its Secretary
Pocket – 14, Sector – 8
Dwarka – Phase 1, New Delhi – 110 077.

11. The Secretary

University Grants Commission
Bahadur Shah Zafar Marg
New Delhi – 110 002.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the common order dated 05.05.2021 in W.P.No.7959 of 2020.



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For the Appellants in : Mr.Vijay Narayanan
W.A.Nos.2310 & 2313 Senior Counsel
of 2021 for Mr.L.Swaminathan

For the Appellant in : Mr.P.S.Raman
W.A.No.2200 of 2021 Senior Counsel
for Mr.L.Swaminathan

For the Respondents in : Mr.V.B.R.Menon
W.A.No.2310 of 2021 for R1 & R2

Mr.Shubharanjani Ananth
for R3

Mr.Rabu Manohar
for R4

For the Respondents in : Mr.V.B.R.Menon
W.A.No.2313 of 2021 for R1 to R7

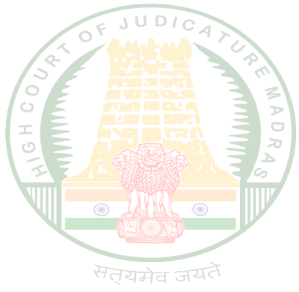
Mrs.V.Sudha
for R9

Mrs.Shubharanjani Ananth
for R8

For the Respondents in : Mr.Ali Hasan Khan
W.A.No.2200 of 2021 for R1 to R5, R7 to R9

Mr.V.B.R.Menon
for R6

Mr.Rabu Manohar
for R10



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COMMON JUDGMENT
(Delivered by the Hon'ble Chief Justice)

All these writ appeals are based on similar set of facts, involving common question. To avoid rigmarole, they are disposed of by this common judgment.

2. For the sake of convenience, the parties would be originally referred to as in the writ petitions.

3. The petitioners had filed W.P.Nos.14388, 7959 & 7778 of 2020 for payment of stipend amounts. The petitioners are the Post-Graduate students of the Mahatma Gandhi Medical College and Research Institute, Puducherry and Aarupadai Veedu Medical College & Hospital, Puducherry. Their grievance is about non-payment of stipend for the academic years from 2017-18 to 2019-20.



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4. The learned Single Judge allowed the writ petitions, directing the Colleges to make payment towards the stipend in terms of Regulation 13.3 of the Medical Council of India (MCI), Post-Graduate Medical Education Regulations, 2000, expeditiously and in any event, not later than four weeks from the date of receipt of a copy of the order. The said order is challenged by the Colleges by filing the present appeals.

5. Mr.Vijay Narayanan, learned Senior Counsel and Mr.P.S.Raman, learned Senior Counsel, in their usual erudition, canvassed submissions on behalf of the appellants.

6. The contour of the submissions is that these students have not paid the fees, as was prescribed in the brochure at the time of taking admission. These students took admission after reading the brochure / prospectus. The yearly fees for the Post-Graduate Course was stipulated and prescribed in the said brochure / prospectus. After taking admission to the Post-Graduate Course, the students



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disputed payment of fees.

7. The matter was litigated in the Court. The dispute was taken up by the students by filing writ petitions in W.P.Nos.4582 & 11701 of 2018. In the said writ petitions, the High Court directed the students to tentatively pay the fees of Rs.20,34,000/- for the Academic Year 2018-19, pending outcome. For the Academic Year 2019-20, a Division Bench of this High Court passed a common order, directing the students to pay 13,00,000/-, pending outcome of the decision to be taken by the Fee Committee and the Supreme Court.

8. Another Division Bench of this Court in W.P.Nos.14232 of 2017 and 8331 of 2020 (PIL), directed the students to submit Affidavit of Undertaking in favour of the Medical Colleges to undertake and pay the balance tuition fee, as per the fee fixed by the Fee Committee. This Court passed a common order, directing that the fee payable for admission shall be fixed by the Puducherry



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Fee Committee and upon fixation of the fee, the adjustment i.e., making good the deficit or granting refund, shall be carried out as directed by this Court in order dated 16.06.2017. The Medical College preferred Special Leave Petition and stay was granted to the common order passed in W.P.Nos.14232 of 2017 and 8331 of 2020.

9. According to learned Senior Counsel, the issue with regard to the fees is pending consideration with the Apex Court. The payment of tuition fee, in full, for the entire duration of the Course becomes mandatory, as stipend is also a part of the tuition fee, since the Medical Colleges are providing opportunities for the Post-Graduate Medical students to learn the area of specialization from the Hospital attached to the Medical College. It is the further contention of learned Senior Counsel that once any Medical College has certain financial claims against a Post-Graduate student, the student cannot, ignoring such claims, set up a case of payment for due stipend. Such stipend is directly related to the fact that the student claiming the same is also under the mandate to pay the due



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fees to the Medical College. If a Post-Graduate student claims payment of stipend, then he must be alive to the fact that the fee towards education received is also to be paid.

10. Regulation 13.6 is in consonance with Regulation 13.3. The entitlement of stipend is directly relatable to the payment of full fee. A Medical College is entitled to the financial claim against a student. The same cannot be ignored by the student, while demanding his own financial claim. The principle of equitable set-off is applicable, as decided in the cases of *Maheshwari Metals & Metal Refinery vs. The Madras State Small Industries Corporation* reported in 1986 LW 785 and *Union of India vs. Karam Chand Thapar* reported in (2004) 3 SCC 504.

11. Learned Senior Counsel further submits that all students have left the Colleges and if the stand of the College is accepted by the Apex Court, it will be difficult for the Colleges to recover the fees from the students. Many of them would have left the Country



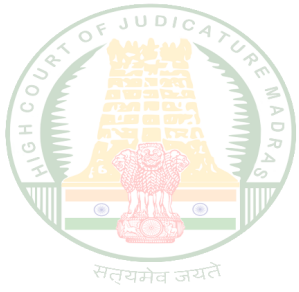
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also. On the principle of equitable set-off, the Colleges may not be directed to pay the stipend, and the Colleges can adjust the stipend amount payable in the fees receivable from the students.

12. Mr.V.B.R.Menon, learned counsel for the students, in his own lucid self submitted that the payment of fees by the students and payment of statutory stipend by the Colleges are two distinct transactions and cannot be called the same transaction. The students did not neglect or avoid the payment of fee as per the orders of this Court. An interim arrangement was made and the students have paid as per the interim arrangement and then only, they were allowed to appear for examination. The students have paid excess of fees, prescribed by the Puducherry Fee Committee. After having extracted the full-time service of the students for three years, denying them stipend is unreasonable.

13. Learned counsel further submits that for completion of the Post-Graduate Course, the students have to mandatorily work as



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full-time Resident Doctors. The remuneration paid as stipend can only be paid as remuneration for the work extracted and cannot be construed as part of other tuition fee. The stipend amount are in the nature of subsistence allowance paid to the Post-Graduate Medical students towards service that they are required to do as Resident Junior Doctors in the Hospitals attached to the Medical Colleges on twenty-four hour basis, as per the MCI Regulations. The learned Single Judge has not quantified the stipend amount payable to each and every student, except, directed the Colleges to pay as per the Regulation 13.3. The Students are entitled for stipend only for the respective periods, during which they have worked in the Hospitals attached to the College.

14. We have considered the submissions of the respective parties and also gone through the judgment delivered by the learned Single Judge.



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15. The Colleges have not denied that the students / petitioners are entitled for the payment of stipend for the work they have performed as Resident Doctors, while undergoing the Post-Graduate Course in their Colleges. The payment of stipend for the work done by the Post-Graduate Students is a statutory obligation of the Medical College. At the same time, it is the right of the students to receive stipend.

16. The Regulation 13.3 mandates that the Post-Graduate Students of Institutions located in various States / Union Territories shall be paid stipend on par with the stipend paid to the Post-Graduate students of the State Government Medical Institutions / Central Government Medical Institutions in the States / Union Territories, in which the Institution is located.

17. Except one petitioner / student, the Colleges have not disputed about their liability to pay stipend to other students. It also cannot be debated and it is also conceded by Mr.V.B.R.Menon,



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learned counsel for the students, that the stipend amount payable to the students would be only for the period during which the students have worked in the Hospitals attached to the Colleges. Learned Single Judge has also not directed the payment of a particular sum of money as stipend, but has only observed that the Colleges shall make the payment to the petitioners towards the stipend in terms of Regulation 13.3.

18. The only bone of contention on the part of learned Senior Counsels for the College is that the dispute with regard to the payment of fees is pending consideration with the Apex Court and in case the stand of the Colleges is upheld, the Colleges will be entitled to recover much more amount of fee from the students than the amount of stipend payable and seek the right of equitable set-off.

19. In the case of *Union of India vs. Karam Chand Thapar (supra)* relied on by learned Senior Counsel on behalf of the Colleges,



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the Apex Court observed that when the plea in the nature of equitable set-off is raised, it is not done as of right and the discretion lies with the Court to entertain and allow such plea or not to do so. In the case of *Maheshwari Metals & Metal Refinery vs. The Madras State Small Industries Corporation (supra)*, the Apex Court observed that the two conditions for allowing a claim of equitable set-off are that it must arise out of the same transaction, which is the basis of the plaintiff's claim and that it would be inequitable to drive the defendant to a separate suit.

20. In the present case, the claims between the parties are not arising out of a commercial transaction. The liability to pay stipend on the part of the Colleges to the students is under a statutory regulation. The amount payable by the College to the petitioners / students as stipend is an ascertained sum of amount. No dispute exists with regard to the payment of amount as stipend. Whereas, the dispute with regard to the payment of fees still subsists. The petitioners / students have complied with the orders passed by this Court and has also paid the amount as per the

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directions of this Court. They have also given their undertaking that in case the Court decides, they would pay the higher amount and / or the difference amount of fees. Today, there are no orders directing the students to pay the enhanced amount of fees and or fees claimed by the college. The students' stand is that they have paid excess fees, ie., more fees than decided by the Puducherry Fee Regulatory Committee and entitled for refund of excess fees paid to the college.

21. The question of equitable set-off while deciding the matter would arise if there is some ascertained sum of money, recoverable by the Colleges from the petitioners. At present, there is no ascertained sum of money directed to be paid by the students to the Colleges towards the fees.

22. The dispute whether the Colleges would be bound by the fees prescribed by the Fee Regulatory Authority, being Deemed Universities, and / or will have an independent right to determine its



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own fees is pending consideration before the Apex Court. However, that in itself would not be sufficient for the Colleges to deny the payment of stipend to the students, who have already paid the fees as directed by this Court from time to time. The payment of stipend being a statutory liability of the College, it would not be open for the College to deny the payment of the same to the students. On the contrary, they are duty-bound and have legal obligation to pay the said amount to the students and cannot deny the same on the ground of equitable set-off, even when the amount that is sought to be claimed by the Colleges is not yet ascertained.

23. In the light of the above, we do not feel any error committed by the learned Single Judge in passing the impugned order. The writ appeals, as such, are dismissed.

24. The learned Single Judge had directed the Colleges to pay the amount within four weeks. An interim order of *status quo* was operating. In view of that, we direct the appellant Colleges to pay



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the amount of stipend to the petitioners / students within a period of six weeks from the date of this order in terms of Regulation 13.3 of the Medical Council of India, Post-Graduate Medical Education Regulations, 2000.

(S.V.G., CJ.)

(P.D.A., J.)

21.07.2023

Index : Yes/No

Neutral Citation : Yes/No

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VERDICTUM.IN



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKEVALU, J.

(drm)

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