



2024 INSC 1018

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. OF 2024
(Arising out of SLP(C) No.11835 of 2023)**

S. GUNASEKARAN

...APPELLANT(S)

VERSUS

**THE UNDER SECRETARY TO GOVT.
AND OTHERS**

...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.
2. This appeal arises out of peculiar facts and circumstances.
3. In the admission process for the Academic Year 2022-23, the appellant herein had participated on the basis of the prospectus that was available on the website of Respondent No.3/Institution. Question No.37 and answer thereto reads thus:

“Q. No.37: Who are eligible for “Exit with Forfeiture”
option?”

Ans:- a) Candidate who has been allotted a seat in Round-1 but does not report at the college may exit with Forfeiture. (i.e. The refundable security fee will not be refunded in such a case).

b) Candidate who has been allotted a seat in Round-2 but does not report at the college may exit with Forfeiture. (i.e. The refundable security fee will not be refunded in such a case).

c) Round 1 candidate who has not been upgraded in Round II may resign his seat allotted in Round-1 within two days of Round-2 result announcement.”

4. In the first round of counselling, the appellant herein was allotted a seat in the M.D. (Endocrinology) in Respondent No.4/College. Accordingly, the appellant took admission in the Respondent No.4/College and joined the course on 14th April, 2022.

5. For the second round of counselling, the result was notified on 26th April 2022, in which the appellant did not get any upgradation. Therefore, he resigned from the said seat immediately on the said date. Indisputably, the communication addressed by the appellant is received by

Respondent No.4/College on 26th April 2022 i.e. on the same day. However, insofar as the communication to Respondent Nos.1 to 3 is concerned, though the appellant has placed on record E-Mail dated 26th April 2022, it is the contention of Respondent Nos.1 to 3 that they were not aware about the resignation of the appellant till 30th April 2022.

6. It is to be noted that in the meantime, the prospectus was amended on 20th April 2022 and question No.37 and the answer thereto were modified as under:

“Q. No.37: Who are eligible for “Exit with Forfeiture” option?

Ans:- a) Candidate who has been allotted a seat in Round-1 but does not report at the college may exit with Forfeiture. (i.e. The refundable security fee will not be refunded in such a case).

b) Candidate who has been allotted a seat in Round-2 but does not report at the college may exit with Forfeiture. (i.e. The refundable security fee will not be refunded in such a case).”

7. On resignation, the respondent No.4/College invoked a clause in the bond and asked the appellant to pay a penalty of Rs.30 Lacs and also directed that till the said amount is paid, his documents would not be released.

8. Aggrieved thereby, the appellant approached the learned Single Judge of the Madras High Court challenging the decision of Respondent No.4/college, however, the petition was dismissed. An appeal carried thereagainst also came to be dismissed by the Division Bench of the High Court. Being aggrieved thereby, the present appeal.

9. Heard Shri S. Nagamuthu, learned Senior Counsel appearing for the appellant, Smt. Aishwarya Bhati, learned Additional Solicitor General, appearing for Respondent Nos.1 to 3 and Shri Krishna Srinivasan, learned Senior Counsel and Shri E.R. Kumar, learned counsel appearing for Respondent No.4.

10. As already stated hereinabove, the present appeal arises out of peculiar facts and circumstances, wherein the appellant was allotted a seat on 8th April 2022 and joined the course on 14th April 2022. In view of answer (c) to question No.37 in the original prospectus, if the appellant was not

upgraded in round 2, he could have resigned from the seat allotted in round 1, if such resignation was sent within two days of the announcement of the result of round 1. Indisputably, the appellant's resignation is within two days from the date of declaration of result of round 2.

11. We, therefore, find that the present situation has arisen due to the confusion created by the two different answers given to question no.37 in the original prospectus which was initially in vogue on 8th April 2022 and the second one which was notified on 20th April, 2022. No doubt that the appellant also ought to have been more diligent. When he was resigning from a prestigious seat of M.D. (Endocrinology) from a highly reputed institution like the Respondent No.4, he should have checked the latest position on the website of Respondent Nos.1 to 3.

12. However, we find that the appellant needs to be given an allowance in the present matter, inasmuch as his decision was largely affected on account of answer no. (c) to question No.37, in the original prospectus.

13. We find that the respondent Nos.1 to 3 ought to have been more diligent in notifying a final prospectus before the

commencement of the admission process. The amendment to the prospectus when the process of admission was underway has created an unfortunate situation like the present one.

14. It is clear from the communications placed on record that the respondents/Authorities were at least aware about the appellant's resignation on 30th April 2022. It is not in dispute that even after that date in the peculiar facts and circumstances on account of covid situation, Respondent Nos.1 to 3 had filled in unfilled posts in the mop-up round. Had the respondent Nos.1 to 3 acted diligently, the seat which lapsed could have been filled by a meritorious student. We find that on account of the casual approach of Respondent Nos.1 to 3, one precious seat in one of the most reputed colleges in the country, i.e. Respondent No.4/College has gone waste.

15. In any case, we find that the present case is not the one wherein the entire blame would be on the appellant. The appellant has unfortunately acted on the representation made to him in the original prospectus. The later amendment to it has created confusion.

16. Shri Krishna Srinivasan, learned Senior Counsel, fairly stated that Respondent No.4/College is not an institution, which is interested in money. He submits that the institute charges nominal fees from its students.

17. We place on record our appreciation for the grace shown by Respondent No.4/College.

18. In the facts and circumstances of the case, we could have saddled the responsibilities on Respondent Nos.1 to 3 and directed them to pay the penalty to respondent No.4. However, since Shri Krishna Srinivasan, learned Senior Counsel, has shown graciousness, we refrain from doing so.

19. At the same time, we find that the appellant is also guilty of contributory negligence. However, taking into consideration the facts and circumstances of the case, we find that instead of paying additional penalty of Rs.30 Lacs, the forfeiture of the amount of Rs.4,06,749.60 already deposited by the appellant (Rs.2,06,749.60 with Respondent No.4/College and Rs.2,00,000/- by Respondent No.4/College with Respondent No.2/Director General of Health Service for the admission of the appellant) shall subserve the ends of

justice.

20. We clarify that the order is passed in the peculiar facts and circumstances of the case and will not be treated as a precedent in any other matter.

21. We therefore modify the order passed by the learned Single Judge and the Division Bench of the High Court. We direct that the appellant would be liable to pay a penalty of Rs.4,06,749.60, which has already been deposited, as above.

22. The Respondent No.4/College shall forfeit the amount of Rs.2,06,749.60 deposited with it by the appellant. Respondent No.2 shall refund a sum of Rs.2,00,000/-, within a period of two weeks, deposited by Respondent No.4/College with it back to Respondent No.4/College as a part of contribution of Respondent Nos.1 to 3 towards the negligence.

23. Needless to state that the Respondent No.4/College shall release all the documents of the appellant within a period of two weeks from today.

24. Shri Krishna Srinivasan, learned Senior Counsel, further states that Respondent No.4/College is not interested

in keeping the penalty and the College will donate the said amount of Rs.4,06,749.60 to the Missionaries of Charity, Kolkata. We again place on record the kind gesture and graciousness shown by Respondent No.4/College through the learned senior counsel appearing for it.

25. With the above observations and directions, the appeal is disposed of.

26. Pending application(s), if any, shall stand disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(K.V. VISWANATHAN)

NEW DELHI;
DECEMBER 17, 2024.