

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No.1247 OF 2018

RIYA GEORGE

PETITIONER

VERSUS

KANNUR MEDICAL COLLEGE AND ORS

RESPONDENTS

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 The petitioner, who is a student of Medicine, has instituted these proceedings under Article 32 of the Constitution seeking a direction to the first respondent to compensate her for the loss of an academic year.

2 In **Sankalp Charitable Trust v Union of India**¹, this Court issued a direction on 28 April 2016 to the effect that admissions to MBBS/BDS courses shall be conducted through the National Eligibility-cum-Entrance Test². On 9 August 2016, the Union government directed all States and Union Territories to conduct combined/centralised counselling for the 2016-17 MBBS admissions, consistent with the judgment of this Court in **Modern Dental College and Research Centre v State of Madhya Pradesh**³.

1 (2016) 7 SCC 487

2 NEET

3 (2016) 7 SCC 353

3 The petitioner secured 97.16 percent marks in her 12th standard Board examinations. In 2016, she qualified for NEET 2016-17 with a percentile score of 94.36.

4 On 20 August 2016, the Government of Kerala directed all medical colleges to admit only students who were selected by the Commissioner for Entrance Examinations⁴ through common counselling. A Writ Petition⁵ was instituted in the Kerala High Court by medical colleges for challenging this direction.

5 On 26 August 2016, the High Court issued interim directions to the effect that MBBS admissions for 2016-17 shall be conducted on the basis of NEET 2016 and that all applications shall be made online to facilitate transparency with regard to merit and the identities of student applicants. On 3 September 2016 the Admission Supervisory Committee for Professional Colleges in Kerala⁶ issued directions to medical colleges in the state, stating that admissions in contravention of those directions will not be registered by the Kerala University of Health Sciences.

6 On 15 September 2016, ASC cancelled all the admissions made by the first respondent (Kannur Medical College) after conducting an enquiry, on the ground that it had neither called for online applications nor did it comply with the requirements in the revised approval of prospectus dated 10 September 2016. On 17 September 2016, ASC issued an order reiterating its directions and called upon all colleges to publish relevant details online. Applications for the MBBS

4 CEE

5 WP (C) No 28041 of 2016

6 ASC

degree course with the first respondent for 2016-17 were also invited. The petitioner applied for admission pursuant to this process.

7 On 26 September 2016, the petitioner handed over all relevant documents, including her certificates to the first respondent and secured admission to the first year of the MBBS degree course. The petitioner paid a total fee of Rs 21.65 lakhs to the first respondent which comprised, *inter alia*, of Rs 10 lakhs as annual fees, Rs 10 lakhs as fee deposit and Rs 1.65 lakhs as a special fee. On 28 September 2016, this Court passed an order directing that all counselling should be centralised⁷. Classes for the MBBS degree course commenced on 1 October 2016.

8 Shortly thereafter, on 2 October 2016, the ASC cancelled MBBS admissions granted by the first respondent due to non-compliance with its orders. The Government of Kerala was requested to direct CEE to conduct centralised admissions. Against the order of cancellation, the first respondent moved a Writ Petition⁸ before the Kerala High Court. On 4 October 2016 the petitioner registered for spot allotment with the first respondent. On 6 October 2016, the High Court, in an interim order, directed the first respondent to submit the records for spot allotment to the CEE. On 13 October 2016, CEE submitted its report decrying the absence of cooperation by the first respondent. The Commissioner had this to state in his report:

“12. The proceedings of the Spot Admission Process started at 9.30 am on 07.10.2016 at the Auditorium, Govt. Medical College, Thiruvananthapuram. Officials including the Director of Medical Education, the Joint Director of Medical Education and officials representing various Medical and Dental

7 SLP (C) No 9862 of 2016

8 Writ Petition (C) No 32186 of 2016

Colleges were also present. The representatives of Kannur Medical College, Anjarakkandy, Kannur reported at the venue of the Spot Admission only at 11.30 am and they furnished the following records.

1. List of total applications received (without NEET rank & Roll. No) – 448 applicants.
2. List of disqualified applications: 7 applicants
3. Category-wise Merit list (without NEET rank & Roll No.) – 448 applicants.
4. List of candidates admitted – 150 candidates
5. List of students registered with KUHS – 150 candidates (Annexure 14 – copy of lists)

The persons who claimed to be the representatives of the college didn't furnish the letter of authorization from the college authorities. When they were asked to register their attendance, they immediately left the counselling hall around 12'O clock without registering their attendance."

9 On 28 October 2016, the High Court delivered a judgment imposing costs of Rs one lakh on the first respondent and directing the ASC to scrutinise all the records of the medical colleges with regard to the admissions made. This order of the High Court was challenged before this Court⁹. On 14 November 2016 admissions to the first respondent were cancelled again due to non-compliance with various directions including the non-publication of lists and conducting admissions offline, among other reasons. On 22 March 2017, this Court declined to interfere with the order of the Kerala High Court. Pursuant to the said order, on 31 March 2017, the Registrar of Kerala University of Health Sciences directed the principal of the first respondent to discharge all the 150 students who were admitted for the academic year 2016-17 and report compliance.

10 The petitioner, together with other students, instituted a writ petition¹⁰ in the Kerala High Court to challenge the order of cancellation. The High Court

9 SLP(C) No 32580-81 of 2016

10 Writ Petition (C) No 15088 of 2017

dismissed the writ petition on 22 June 2017, which was confirmed by this Court on 10 July 2017.

11 The Kerala Professional Colleges (Regulation of Admissions in Medical Colleges) Ordinance 2017 was promulgated by the Governor. The Ordinance sought to regularise MBBS admissions in certain medical colleges against the payment of Rs 3 lakhs per student as a regularisation fee. The Ordinance was held to be *ultra vires* by this Court in **MCI v State of Kerala**¹¹The petitioner, in the meantime, appeared for NEET 2017 and secured admission at the Amrita Institute of Medical Sciences.

12 On 26 September 2017, the father of the petitioner addressed a communication to the principal of the first respondent seeking a refund of the documents and fees submitted to the college since the petitioner had joined another college for pursuing her MBBS course. The letter read thus:

“Sub: Request to withdraw from MBBS Course
My daughter Riya George has joined for the first year MBBS Course in Kannur Medical College, Anjarakandy for the academic year 2016-17. Since the admission to your college is under dispute, my daughter no longer waned to continue with the course. My daughter has already joined another college for MBBS Course. I request you to return/refund all the documents and fees submitted by me/my daughter at the earliest.”

13 Simultaneously the petitioner’s father addressed a letter to the Station House Officer of the Chakkarakkal police station, Kannur where he had lodged a complaint on 26 September 2017 stating that the dispute with the college had been settled against the receipt of an amount of Rs 20 lakhs on 25 September

11 (2018) SCC Online SC 1467

2018 towards full and final settlement, as a result of which the petitioner did not wish to proceed with the complaint any further. The petitioner's father had also instituted a petition before the Admission and Fee Regulatory Committee for Medical Education in Kerala. The father of the petitioner submitted an application for the withdrawal of the petition in the following terms:

"Petition filed by the petitioner KV George in the above matter to permit him to withdraw the above complaint.
Since the matter has been talked over and settled between the petitioner and respondent amicably and as the petitioner has received Rs 20 lakhs as per Demand Draft No 960174 and 960175 for Rs 10 lakhs each drawn on Canara Bank, Chakkarakal Branch dated 25.9.2017 in full and final settlement of the claim of the petitioner, the petitioner does not want to proceed with the above complaint any further.
Hence it is humbly prayed that the Hon'ble Chairman may be pleased to permit the petitioner to withdraw the above complaint in the interest of justice.
Dated this the 26th day of September 2017."

14 It is admitted that two demand drafts dated 25 September 2017, each in the amount of Rs 10 lakhs towards refund of the fee were received by the petitioner. The father of the petitioner submitted an affidavit dated 26 September 2017 in the following terms:

"I, KV George, S/o Varkey, aged 58 years, Kanjiramkuzhi House Chengalayi PO, Sreekandapuram, Kannur do hereby solemnly and undertake as follows:
My daughter Riya George joined for the first year MBBS Course in Kannur Medical College, Anjarakandy for the academic year 2016-17. Since the admission to the aid college is under dispute, I have filed complaint before Chakkarakal police station against the college and its various officials and management. I have also filed a complaint before admission and Fee Regulatory Committee. The matter has been talked over and settled between me and the college and I have received Rs 20 lakhs as per Demand Draft No 960174 and 960175 for Rs 10 lakhs each drawn on Canara Bank, Chakkarakal Branch dated 25.9.2017 towards the amount claimed by me from the college towards the full and final settlement. Therefore, I undertake to withdraw the complaint

filed before the above Forum and to withdraw from the course. I have already submitted letters/memos to that effect. I undertake to appear before the above Forums in person or through lawyer and submit orally or in writing any other submissions required by concerned authorities to fully and effectively closing the entire dispute between the college and me.”

15 The Chairperson of the Admission and Fee Regulatory Committee for Medical Education passed an order dated 26 September 2017 permitting the withdrawal of the complaint filed by the petitioner as having been settled. The order reads as follows:

“ORDER

Sri KV George, the father of Riya George who got admission to the MBBS Course in the academic year 2016 in the respondent college, Kannur Medical College filed this petition for directing the respondent college to return the amount of Rs 21,65,000/- remitted by him towards fee. The matter has been settled between the parties. As per the settlement the complainant has agreed to receive 2-post-dated cheques each for Rs 10 lakhs drawn on Canara Bank, Chakkarakkal branch dated 25.09.2017 in full and final settlement of the claim of the petitioner.

In view of the settlement between the parties, Sri KV George is permitted to withdraw the complaint. The settlement is recorded.”

16 Subsequently, it appears that another complaint was filed by the petitioner’s father stating that he had received an amount of Rs 20 lakhs but, that the remaining amount of Rs 1.65 lakhs had not been paid. He also claimed an amount of Rs 3.50 lakhs towards interest on the amount paid. Rejecting the objection of the first respondent that there had been a full and final settlement between the parties, the Committee passed an order on 29 December 2017 allowing the claim for the balance of Rs 1.65 lakhs. The Committee rejected the claim for interest, leaving it open to the complainant to work out his remedies in

an appropriate forum. The first respondent filed a petition for review of the order dated 29 December 2017 on the ground that there had been a final settlement of Rs 20 lakhs. While rejecting the review petition, the Committee observed thus:

“Shri KV George submitted that he was in a hurry to get back the certificates and the money and in the above circumstances there was no other alternative but to sign in the Memo prepared by the college for withdrawing the complaint. He further submitted that he was in dire need of the money in connection with the admission of his daughter, and hence he had no other alternative, but to sign in the Memo prepared by the college. After considering all the aspect the committee had taken the view that the signing of the Memo seeking permission to withdraw the complaint was not an act made on free consent of the complainant but was made in compelling circumstances. Hence the Principles of Waiver and Estoppel shall not have application in the present circumstances.”

In consequence, the Committee has maintained that the college was liable to return an amount of Rs 1.65 lakhs to the petitioner.

17 In the meantime, on 29 August 2018, a consent order was passed by a two Judge Bench of this Court in **The Principal, Kannur Medical College v Admission Supervisory Committee for Professional Colleges in Kerala**¹².

The terms of the consent order, *inter alia*, envisage that:

“1.The college shall return the double of the amount than the fees deposited by each one of 150 students with college, by 4 September, 2018. It is submitted that the amount shall be remitted in the bank account of each of the students. Let compliance report including bank statements, bank account numbers with names of students be filed not only in this Court but also to the Admission Supervisory Committee (ASC). The ASC shall ascertain and submit the report whether amount has been refunded, as ordered, to the students and bank accounts belong to them.”

12 Special Leave Petition (C) No 23225 of 2018

18 Subsequently, the issue of refund was revisited by another order of the two Judge Bench of this Court dated 4 October 2018. Before this Court, the ASC submitted a report on 1 September 2018 recording that diverse amounts ranging from Rs 1 lakh to Rs 35 lakhs were collected from most of the 150 students who had been admitted by the college. Dealing with this aspect of the matter, this Court observed thus:

“It is a seriously disputed fact in the instance case how much amount had been collected from each of the students and what has been refunded as per the Order passed by this Court is not the appropriate sum. In the facts and circumstances of the case, as certain material has been placed on record by the college in this Court only and that was not placed before the ASC and students have also come up with certain documents indicating how they had collected amount paid, they are also required to be considered by the ASC. This Court cannot conduct factual enquiry. It was suggested by Mr. Jaideep Gupta, learned senior counsel that the parties may be relegated to the ASC for adjudication of the aforesaid aspect. The 6 ASC to consider the material which may be placed on record by the respective parties and take a decision in accordance with law on the basis of the evidence adduced in each of the case with respect to each of the students.”

19 On the aspect of refund, the Court directed that an inquiry be made by the ASC and an appropriate order should be passed thereon. In pursuance of the above directions of this Court, the ASC issued a notice on 28 November 2018 stating that the complaints of 12 students were being posted for hearing on 3 December 2018. The complainants and the first respondent were directed to appear before the Committee (with relevant documents) for establishing the right of claim. The students to whom a notice has been issued include the petitioner.

20 The petitioner has moved these proceedings under Article 32 of the Constitution seeking an order for the payment of damages by the first

respondent. The basis of the claim is that she has lost one year of education as a result of the legal proceedings emanating from the cancellation of the admissions granted by the first respondent. Learned counsel submitted that the first respondent was guilty of violating the regulations governing the process of admissions. As a result, students have had to suffer, the petitioner being one among them. Learned counsel for the petitioner submitted that the petitioner should not be relegated to pursue her claims before the Committee since that will only delay the proceedings. She appealed to this Court to bring a finality to the matter by a suitable award for damages against the first respondent.

21 A preliminary objection has been raised on behalf of the first respondent to the maintainability of the writ petition on the ground of a wilful suppression of material facts by the petitioner. Mr Huzefa Ahmadi, learned Senior Counsel appearing on behalf of the first respondent submits that the petition contains no disclosure of the following material facts:

- (i) The complaint lodged with the police was withdrawn specifically on the ground that an amount of Rs 20 lakhs had been received in full and final settlement from the first respondent;
- (ii) An application was submitted on 26 September 2017 to the Admission and Fee Regulatory Committee for the withdrawal of the complaint in lieu of the receipt of Rs 20 lakhs in full and final settlement;
- (iii) An affidavit filed by the father of the petitioner withdrawing all claims; and
- (iv) By an order dated 26 September 2017, the Chairperson of the Admission Fee Regulatory Committee for Medical Education permitted the withdrawal of the complaint.

22 We have, during the course of the hearing, perused relevant parts of the writ petition. In the synopsis and the list of dates, there is a significant absence of the facts which have been disclosed in the counter affidavit filed by the first respondent. The only reference to the refund of an amount of Rs 21.65 lakhs is contained in para 2(o) of the Special Leave Petition in the following terms:

“A perusal of the factual backdrop thus clearly reveals that the Petitioner was a victim of deliberate actions of Respondent that were illegal and contrary to the directions of the Court, MCI and the ASC. Even for refund of Rs 21,65,000/- collected by the College, the Petitioner had to move the ASC since the College refused to refund moneys deposited.”

23 Apart from this, the petitioner has annexed a copy of the order dated 29 May 2018 passed by the Admission and Fee Regulatory Committee on the review petition filed by the first respondent against the order of the Committee dated 29 December 2017 for the refund of an amount of Rs 1.65 lakhs. Material facts pertaining to what had been transpired prior to that order have not been disclosed in the pleadings. We find this conduct of the petitioner to be unsatisfactory.

24 While moving a writ petition before this Court, the petitioner ought to have made a full, fair and candid disclosure of all facts. The fact that while seeking a refund of the fees paid to the first respondent, the father of the petitioner had executed several documents by which he had unconditionally withdrawn the claim, was certainly a material circumstance which ought to have been disclosed before this Court. Learned counsel for the petitioner submits that facts pertaining to the withdrawal of the claim, including the documents which were executed by her father, were unknown to both her and her father. She submitted that these

documents were obtained by the first respondent when the fee was refunded. It is not possible to accept this contention. The execution of the documents is not in dispute. That apart, the petitioner has annexed a copy of the review order passed by the Committee. There is sufficient indication in the order to lead the petitioner to a knowledge of what had transpired earlier. Despite this, a full statement of facts has not been made. Learned counsel appearing on behalf of the petitioner submits that the claim was withdrawn under duress, since the petitioner was required to obtain a refund of fees, having secured admission to the Amrita Institute of Medical Sciences. In order to enable the Court to consider the plea of duress, it was the bounden duty and obligation of the petitioner to disclose a full and complete statement of facts. This has not been done.

25 Ordinarily, this should result in the dismissal of the writ petition under Article 32 of the Constitution. However, justice to the petitioner should not become a victim of the prestige of this Court. In deciding not to dismiss the petition, we have borne in mind the fact that the Admission and Fee Regulatory Committee has issued a notice to the petitioner on 28 November 2018, fixing a hearing for the purpose of deciding upon her claim, amongst the claims of other students. The Committee, in its review order dated 29 May 2018 has already adverted to this aspect, which we have extracted earlier.

26 There is another reason why we are of the opinion that it would be inappropriate for this Court to quantify damages in the present proceedings. As we have noted earlier, another two Judge Bench of this Court issued directions by consent on 29 August 2018 requiring the first respondent to deposit “double the amount” of “the fees deposited by each one of 150 students” with the college.

This batch of 150 students includes the petitioner. Technically, it is true that the petitioner was not a party to the earlier proceedings and that the order dated 29 August 2018 is a consent order. However, any determination by this Court in the present proceedings of the quantum of damages payable to the petitioner would be contrary to the underlying purpose and object of the order passed by the coordinate bench. In the order dated 29 August 2018, the two Judge Bench laid down the principle – refund of double the amount of the fee – but left the exact quantification of the amount in each case to be determined by the Committee. Quantification of damages in monetary terms in the present writ petition will have a bearing on the pending proceedings before the Committee. That proceeding covers the entire batch of 150 students. Moreover, in pursuance of the order, the petitioner has received a notice from the Committee to appear in support of her claim.

27 There can be no manner of doubt that the petitioner is entitled to be compensated for the loss of a valuable year which was occasioned by the misdemeanors of the first respondent. A student who has been deprived of a valuable year in pursuing her studies, cannot be left in the lurch. It is in this background, that the explanation that the complaints made by the father of the petitioner were withdrawn only because there was an urgent need to obtain a refund of the fee, to enable the petitioner to secure admission to the Amrita Institute of Medical Sciences must be understood. Middle class parents do not have the luxury of resources. We must form a robust understanding of the circumstances in which the father of the petitioner withdrew his complaint. The Committee has in fact recorded a finding of fact that the withdrawal was not

voluntary and was occasioned by the serious impediment in receiving a refund of fees. Hence, the petitioner would be entitled to the benefit of the principle which was formulated in the orders of this Court dated 29 August 2018 and 4 October 2018. Since the issue has been remitted back to the Committee by a coordinate bench, following the norm of judicial discipline, we are inclined to follow the same course of action.

28 In order not to prejudice the case of the petitioner, we leave it open to her to pursue her claim before the Committee. The petitioner would be at liberty to pursue her claim before the Committee in terms of Clause 1 of the order dated 29 August 2018 passed by this Court as clarified by the subsequent order dated 4 October 2018. We request the Admissions Committee to take a decision expeditiously and within a period of three months of the receipt of a certified copy of this judgment. All the rights and contentions of the parties are kept open.

29 The Writ Petition shall accordingly stand disposed of. There shall be no order as to costs.

.....J
[Dr DHANANJAYA Y CHANDRACHUD]

.....J
[HEMANT GUPTA]

**NEW DELHI
FEBRUARY 21, 2019**