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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-716-2022 (O&M)

Date of Decision : November 21, 2022

Aditya Kashyap and others

..... Appellants

Versus

State of Punjab and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. Chetan Mittal, Senior Advocate
with Mr. Sarthak Gupta, Advocate
and Mr. Varun Dutta, Advocate
and Ms. Sehaj Sandhawal, Advocate
for the appellants.

Mr. Paramjit Batta, Addl. A.G., Punjab,
for the State.

Mr. Puneet Gupta, Advocate
for respondent No.2.

VIKRAM AGGARWAL, J

CM-1709-LPA-2022

This is an application for condonation of delay of 28 days in re-filing the present appeal. The application is supported by an affidavit of applicant-appellant No.1.

Heard. For the reasons, mentioned in the application, the same is allowed and the delay of 28 days in re-filing the appeal is condoned.

CM-1710-LPA-2022

This is an application for placing on record the Civil Writ

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Petition, written statement, annexures and other documents and for exemption from filing the certified copies of the said documents. The application is supported by an affidavit of applicant-appellant No.1.

Heard. For the reasons, mentioned in the application, the same is allowed and the documents mentioned therein are taken on record.

LPA-716-2022 (O&M)

The present Letters Patent Appeal assails the judgment dated 20.04.2022, passed by the learned Single Judge vide which the writ petition filed by the parents was dismissed.

The appellants are under-graduate students of Rajiv Gandhi National University of Law, Patiala-respondent No.2 (some of them have graduated during the pendency of the present litigation). Regular classes were suspended w.e.f. 14.03.2020 on account of the COVID-19 Pandemic. The students were asked to vacate the hostel premises and online classes commenced. Since the hostel premises had been vacated and academic activities were going on in a restricted manner and that too in the online mode, the students submitted a representation on 18.05.2020 for reduction/waiver of fee under various heads. A subsequent representation dated 25.05.2020 with a similar request was also submitted to the Dean Students Welfare of the University. The matter was taken up by the Finance Committee. In its meeting held on 20.06.2020, the Finance Committee took a decision that the annual increase of Rs.5,000/- in the tuition fee for the academic year 2020-21 would be waived off and that mess charges would not be taken till the operations of the mess resumed.

Vide notice dated 27.06.2020, the students were called upon to deposit the fee for the next semester in accordance with the aforesaid

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decision.

Against the said notice, the students preferred another representation dated 03.07.2020 and also preferred a complaint to the National Human Rights Commission. Legal remedies by way of a legal notice dated 05.07.2020 were also initiated but having failed to get any relief, the present appellants preferred a writ petition.

Respondent No.2 opposed the writ petition by way of a detailed written statement whereas respondent No.1-State of Punjab preferred a short affidavit.

Respondent No.2 took up several grounds including the writ petition having been filed only by a handful of students, and, therefore, lacking sufficient representative character; the University being a creation of statute was bound to function in accordance with its provisions; the fee structure having been approved by the relevant statutory bodies etc. The amount being spent by the University on various facilities being provided to the students was also detailed. It was also stated that the students had locked their rooms while leaving the hostel and, therefore, the possession remained with them as a result of which the students were bound to pay the hostel rent. Respondent No.2-University defended the decision dated 20.06.2020 taken by the Finance Committee which, according to respondent No.2 was the best possible relief that could have been granted to the students. The proposed facilities for the students were also detailed in the written statement. It was also averred that the appellants have not placed on record any proof that their parents were undergoing any financial hardship and, therefore, the demand for additional fee reduction was unreasonable.

In the rejoinder, the averments made in the written statement

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were denied and those made in the writ petition were reiterated.

Vide the impugned judgment dated 20.04.2022, the learned Single Bench dismissed the writ petition while holding that the decision taken by the Finance Committee in the notice dated 27.06.2020 was not perverse, unreasonable or arbitrary. The learned Single Bench, however, observed that respondent No.2 would sympathetically consider the individual cases for waiver of late fee charges on the basis of material produced before it. Respondent No.1 was also directed to objectively consider the release of arrears pertaining to the year 2019-20.

Aggrieved by the said judgment, the present Letters Patent Appeal has been preferred.

On 29.08.2022, the following order was passed:-

“Learned senior counsel for the appellants has produced a copy of the communication dated 2nd August, 2022, issued by the University Grants Commission to the Vice-Chancellors and Principals of various Universities/colleges/institution, wherein it has been mentioned that several references have been received from students that they have not been given the benefit of non-use of hostel and mess services during the Covid-19 pandemic period.

Having heard the counsel for the parties, we are only inclined to interfere on the limited aspect of payment of deduction for charging of rent as far as the hostels are concerned for the academic sessions 2020-21. The reasoning which has been assigned by the Senior Counsel for the appellants for asserting that the amount of rent which has been charged from the students cannot be more than what has been charged from the commercial establishment tenants/lessee. Even if taking the stand of the respondent-University to be

correct that the appellants were in possession of their respective rooms during this period so were the contractors running their establishments in the University. The contractor was only to supply the food etc. to the students. He has gone to the extent of saying that the appellants would be satisfied if 50% of the rent which is being charged on them be charged instead of 100%.

We find this contention of the learned counsel for the appellants to be just and reasonable.

Counsel for the respondent-University to seeks instructions from the authorities of the University and to file an affidavit in this regard.

List on 15.09.2022.

On the aspect of the late fee, counsel for the parties to workout the details as there is some differences on this aspect.”

In pursuance of the aforesaid order, respondent No.2 filed an affidavit again giving the details with regard to the fee structure and the decision taken by respondent No.2 and the Finance Committee.

We have heard learned counsel for the parties and have perused the record.

Learned Senior Counsel representing the appellants has stated that in pursuance to the undertaking given by learned counsel for respondent No.2 on 29.08.2022, a lengthy affidavit has been filed by respondent No.2 again giving all the intricate details with regard to the expenses, fee schedule etc. whereas, the affidavit should have been filed in terms of the order dated 29.08.2022. Learned Senior counsel for the appellant has further submitted that it is highly unfair that only 25% charges have been charged from the Contractors of mess, shops and canteens whereas full rent has been charged from the students on the flimsy ground

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that the possession of the rooms was with the students whereas in the meeting held on 19.06.2020, under Item No.7, it was observed that the shops etc. had been retained by such contractors. Learned counsel has submitted that the students were in possession of the rooms not out of choice but out of compulsion as it was difficult for anyone to return to the premises on account of the pandemic. Learned counsel has reiterated that if 50% of the hostel charges are waived off, it would be a big relief for the students. Learned counsel has further submitted that the learned Single Bench has wrongly observed that the University has already given a reduction of 17.8% whereas 15% of Rs.20,06,000/- would come to Rs.30,000/-. Learned counsel has also referred to the judgment of Hon'ble Supreme Court in *Indian School, Jodhpur and Anr. vs. State of Rajasthan and Ors. 2021 (10) SCC 517.*

On the other hand, learned counsel representing respondent No.2 has submitted that the hostel rent is being charged by the University as a part of the composite fee and, therefore, it would not be possible to segregate the fee under different heads. He has further contended that out of Rs.20,06,000/-, Rs.20,000/- is refundable security and, therefore, the effective fee would be Rs.1,86,000/- out of which a rebate of Rs.14,782/- has already been given. Further Rs.5,000/- increase has not been charged and in addition thereto to Rs.3600/- per student has also been refunded. It has been contended that the total amount would, therefore, come to Rs.23,382/- per student which comes to 12.83% of Rs.1,86,000/-. Learned counsel has further submitted that though the classes had been suspended and the students had left the hostel, the University incurred huge expenditure in maintaining the hostel and other areas of the campus, the

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details of which have been given in the pleadings before the learned Single Bench and before this Court as also in the affidavit filed now. Learned counsel for respondent No.2 has also contended that the appellants cannot equate the issue of hostel rent with that of canteens, shops etc. because the possession of the canteens, shops etc. was with the University, as all of them were lying closed when the pandemic was going on but the possession of the hostel rooms was with the students. Learned counsel has submitted that on account of the possession of the hostel rooms having remained with the students, they could not be maintained and their condition deteriorated on account of dampness etc. Learned counsel has submitted that respondent No.2 had to incur considerable expenditure on getting the hostel rooms and hostel buildings repaired. It has also been argued that the administration wanted to set up a COVID-19 isolation centre in the hostel but the same could not be done as the possession of the rooms was with the students. Learned counsel for respondent No.2 has contended that there is no error in the judgment passed by the learned Single Bench and the same, therefore, deserves to be upheld.

We have considered the arguments advanced by learned counsel for the parties and have gone through the judgment of the learned Single Bench. The other documents on record including the pleadings of the parties and the affidavit now filed by respondent No.2 have also been perused and considered.

It is true that this Court could not be in a position to determine intricate issues with regard to the fee charged by respondent No.2 under various heads or the fee which should have been or could have been charged from the students including the appellants. It was rightly held by the

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learned Single Bench that such disputes would be decided by the relevant Regulatory Authority on the basis of the material produced before it. Infact learned Senior counsel representing the appellants had restricted his claim to hostel rent only while arguing the case on 29.08.2022 and, therefore, the other issues need not be gone into. It is also not in dispute that the annual increase of Rs.5,000/- has been waived off by respondent No.2 and an additional amount of Rs.14,782/- has been refunded to every student. It has rightly been observed by the learned Single Bench that there is no denial to these facts by the appellants. However, the only thing which is weighing in the mind of this Court is that respondent No.2 charged only 25% of the rent from the contractors of mess, canteens, shops etc., and there is absolutely no justification in charging the entire hostel rent from the students. Those were tough times for everyone. The students were out of the hostel rooms not out of choice but out of compulsion. Their belongings were left in the rooms. There was panic and fear all around. Those who did not have secure jobs were suddenly faced with loss of income. While people were trying to make their two ends meet, the burden of fee etc. was putting them under additional pressure. The institutions also suffered because they had to maintain huge buildings, staff etc. If one weighs all these facts, there does not appear to be any justification for charging the entire hostel rent from the students especially when only 25% of the rent had been charged from the contractors of mess, shops, canteens etc. The argument that respondent No.2 could not offer the hostel for COVID isolation center is devoid of merit because during the course of arguments on 09.11.2022, a question was put to learned counsel for respondent No.2 as to whether respondent No.2 would have had some financial benefit if COVID isolation centre had been

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set up in the hostel and learned counsel for respondent No.2 conceded that there would be no financial benefit as the Government would not have paid anything for the same. That being so, the non-opening of COVID isolation centre in the hostel would not affect the merits of the issue in hand. We are, therefore, of the considered opinion that respondent No.2 is not justified in charging the full hostel rent from the students for the period in question.

In view of the aforesaid discussion, it is directed that in addition to the benefit that has already been given to the students, respondent No.2 would charge only 50% of the hostel rent from the students for the period in question and would refund the remaining amount to the students (if so deposited) within a period of four weeks from today. Since respondent No.2 would still be left with 50% of the hostel rent, the same, in our considered opinion, would be sufficient for the expenses which respondent No.2 may have incurred on the repair and maintenance of the hostel rooms, post the pandemic. This direction would be in consonance with the directions issued by the Hon'ble Apex Court in para No.117 (i) & (iii) of the *Indian School, Jodhpur's case (supra)*.

The appeal is accordingly disposed of in the aforesaid terms.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

November 21st, 2022

mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No