

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA**AT CHANDIGARH**

C.W.P. No. _____ OF 2020

MEMO OF PARTIES

1. Aditya Kashyap, son of Pawan Kumar Jha, aged about 22 years.
2. Shubham Shukla, son of Rahul Shukla, aged about 20 years.
3. Aviral Kumar Mishra, son of Sudha Mishra, aged about 20 years.
4. Vaibhav Mukhraiya, son of Sandhya Mukhraiya, aged about 22 years.
5. Harsh Gopal Daga, son of Chandra Gopal Daga, aged about 21 years.
6. Anmol Mahajan, son of Ashok Mahajan, aged about 21 years.

All students of Rajiv Gandhi National University of Law, Sidhuwal,
Bhadson Road, Patiala.

... Petitioners

VERSUS

1. State of Punjab through Secretary, Department of Higher Education, Punjab Civil Secretariat, Sector 1, Chandigarh.
2. Rajiv Gandhi National University of Law, Sidhuwal, Bhadson Road, Patiala through its Registrar.

... Respondents

(Varun Issar) (Sehej Sandhawalia)

P-3296/10 PH-2225/19

(Sarthak Gupta)

ADVOCATE
COUNSEL FOR THE PETITIONER

Place: Chandigarh

Dated: 8/7/2020

CIVIL WRIT PETITION under Article 226 of the Constitution of India, praying for the issuance of a writ in the nature of certiorari for quashing the impugned order dated 20.06.2020 (Annexure P-6) vide which no relief has been granted in lieu of the semester fees and subsequent notice dated 27.06.2020 (Annexure P-7) asking for advance payment in full amounting to Rs. 1,13,500/- for the upcoming semester (August-December) and imposing exorbitant fine on delay of payment of such fee;

AND

For the issuance of a writ in the nature of mandamus directing the Respondents to charge only that amount of fee from the students for the upcoming semester (August-December 2020), in lieu of which expenditure is actually being incurred by the Respondent No. 2 University and can be accounted for;

AND

For the issuance of a writ in the nature of mandamus directing the Respondents to adjust the unutilized portion of fees charged for the Summer Semester (February-May 2020), towards the upcoming semester (August-December 2020);

AND

With a further prayer that pending disposal of the instant writ petition, the operation and effect of the impugned notice dated 27.06.2020 (Annexure P-7) may kindly be stayed in the interest of justice;

AND

Issuance of any other appropriate writ, order or directions which this Hon'ble Court may deem fit in the facts and circumstances of the present case.

RESPECTFULLY SHOWETH:

1. That the Petitioners herein are citizens of India, and are students enrolled in the Five Years Integrated Course (FYIC) B.A. LL.B. (Hons.) at the Rajiv Gandhi National University of Law, Distt. Patiala, Punjab, and are hence entitled to invoke the extra-ordinary writ jurisdiction of this Hon'ble Court.
2. The dispute in short is that the petitioners are law students belonging to different states of the country. Due to the lockdown imposed in the COVID-19 scenario the students have left the premises of the respondent University and gone back to their homes. Respondent No.2 in such a situation had stated that regular online classes would continue to take place via notice dated 12.04.2020 (**Annexure P-1**) so as to offer the students maximum facilities qua the fee already charged by the institute. In contrast however there have been no regular online classes as per the schedule announced, moreover the respondent continues to charge fees beyond the tuition fee amounting to 50% plus the actual warranted amount. The petitioner through various representations sought relief from the respondent no.2 university; however, the latter has passed a total non-speaking, arbitrary impugned order behind the backs of the petitioner. Various representations have been filed including various decisions of the State Government, instead of

considering the same the respondent university has issued notice dated 27.06.2020 (**Annexure P-7**). Hence the present writ petition.

3. That the facts of the instant case are that since 14.03.2020, the campus of Respondent No. 2 is shut on account of the lockdown necessitated by COVID-19. No physical classes whatsoever are happening since then. The Respondent No. 2 University vide notice dated 12.04.2020 informed the students that online classes shall be conducted w.e.f. 15.04.2020. A copy of this notice dated 12.04.2020 is annexed herewith as (**ANNEXURE P-1**). However, such a notice is a sham as hardly any online classes took place since 15.04.2020. Furthermore, the Academic Planning Board of Respondent No. 2 has taken a decision in its meeting dated 19.06.2020 to hold online classes w.e.f. 01.08.2020 i.e. for the upcoming semesters too. A copy of such decision dated 19.06.2020 is annexed herewith as **ANNEXURE P-2**. In addition thereto, as aforementioned, the students are not residing in their duly allotted hostel rooms. Hence, the Respondent No. 2 University is not incurring expenses that it incurred during its regular functioning.
4. That taking into account the aforesaid factors, the Petitioners herein, along with other students of the Respondent No. 2 University, addressed representation dated 18.05.2020 to various authorities including, *inter-alia*, the Vice-Chancellor of Respondent No. 2 University, the Hon'ble Chancellor of Respondent No. 2 University and the Hon'ble Chief Minister of Punjab. Vide the said representation, which was signed by 726 out of 850 students of the Respondent

No. 2 University, the students sought, *inter-alia*, the exemption of annual increase in the fee structure for the upcoming academic year, rebate on payment of late fees and a partial refund of the fee already charged for the previous semester (February-May 2020), which remains unutilised, the balance of which includes Amenities Fee, Moot Court Fee etc. or its adjustment by appropriate monetary relief in the fees for the next semester (August-December 2020).

5. That the students received a notice dated 19.05.2020 from the Hon'ble Chancellor through the Registrar asking the students to direct their queries to the Dean Students' Welfare, RGNUL (*hereinafter*, DSW). Copy of the said notice dated 19.05.2020 is annexed herewith as **ANNEXURE P-3**. The students thereafter wrote to the DSW vide representation dated 25.05.2020 detailing their request. Copy of the the said representation dated 25.05.2020 sent is annexed herewith as **ANNEXURE P-4**. The DSW wrote back to the students vide reply dated 25.05.2020 that the matter will be put before the appropriate authorities for necessary action. Copy of the e-mail dated 25.05.2020 received in this regard is annexed herewith as **ANNEXURE P-5**.
6. That thereafter, on 20.06.2020, the students, including the Petitioners herein, were apprised of the impugned decision of the Finance Committee of the Respondent No. 2 University taken in its meeting held on 20.06.2020, wherein it was decided that the relief to students would merely include waiver of the annual increase in the tuition fee i.e. Rs. 5,000/- and a temporary postponement of the Mess Fee. Copy of the Minutes of Meeting dated 20.06.2020 containing

the impugned decision is annexed herewith as **ANNEXURE P-6**. It is pertinent to mention here that the said decision is nothing but an insult to injury to the students, passed behind their backs, and without adverting to any of their requests in their representation dated 18.05.2020. It is completely non-speaking and hence, arbitrary.

7. That thereafter, pursuant to the aforesaid impugned decision, the Petitioners herein received notices dated 27.06.2020 asking them to deposit the requisite fee latest by 10.07.2020. Copy of one such notice dated 27.06.2020 asking the students to deposit an exorbitant fee of Rs. 1,13,500/- and 1,11,000/- latest by 10.07.2020 is annexed herewith as **ANNEXURE P-7**. It is further pertinent to mention here that as per the website of the Respondent No. 2 University, in case the fee is not paid by 10.07.2020, a late fee starting from Rs. 1,000/- and increasing thereafter per week is chargeable. The same link further lists out the various heads of fees. A copy of the said link mentioning the fee details, along with the schedule for its payment, is annexed herewith as **ANNEXURE P-8**.
8. That a bare perusal of the heads under which the fee is being charged reveals that the Respondent No. 2 University, in addition to charging a tuition fee of Rs. 55,000/- for the upcoming semester (August-December 2020), is charging fees totalling Rs. 41,000/- for heads such as Amenities Fee, Campus Development Fund, Moot Court Fees, Examination Fees and Library Fee, whereas the campus of Respondent No. 2 University is completely shut. In addition thereto, the Respondent No. 2 University is charging Rs. 15,000/- in case

of double occupancy and Rs. 17,500/- in case of single occupancy as hostel rent and other charges for the upcoming semester (August-December 2020), whereas none of the students, including the Petitioners herein, are residing in the said hostel rooms. Further, the Respondent No.2 is further charging an increased amount of hostel rent on the basis of up-gradation from Twin Sharing Room to single room despite the fact it is the own stand that only online classes will be conducted and hence the students are not utilising the same and more so no allotment to the said rooms have been made for which a higher upgraded fee is being charged. Even with regard to the Moot court, the fee is being charged despite the fact no moot courts were conducted last semester and there is no circular with regard to moot court being conducted for this semester and The Respondent No. 2 University has thus not decreased its fee for the upcoming semester in order to reflect a decrease in expenditure on account of closure of the campus. It has further not utilised the portion of fees lying unspent of the previous semester (February-May 2020) and more so when regular classes were not conducted during that period.

9. That the Petitioners herein are conscious of the Respondent No. 2's liability to remunerate the teaching/non-teaching staff members of the University and other expenditure which, notwithstanding the closure of campus, is to be duly incurred. However, the action of the Respondent No. 2 University to charge fee for every service for the entire semester while the routine in-campus activities remain suspended, is without any rationale and is thus arbitrary.

10. That on 03.7.2020, the Petitioners herein, along with other students, sent another representation via e-mail to the Respondent No. 2 University. However, the Respondent No. 2 University did not take any action whatsoever on it. A copy of the representation dated 03.07.2020 is annexed herewith as **ANNEXURE P-9**.
11. That furthermore, a complaint dated 03.07.2020 was made with the National Human Rights Commission (NHRC) for appropriate action against the cruelty being meted out to the students and their parents/guardians by asking them to pay an exorbitant and disproportionate amount of fee, in one instalment, at such a short notice. Copy of the complaint dated 03.07.2020 is annexed herewith as **ANNEXURE P-10**. Accordingly, a case bearing No. 851/90/0/2020 was registered by the NHRC in this regard on 03.07.2020.
12. That seeing no recourse, the Petitioners herein, along with other students, were compelled to serve a legal notice dated 05.07.2020 to the Respondent No. 2 University asking it to reconsider its unjust demand for disproportionate fees and abstain from profiteering in the trying times of pandemic. A copy of the said legal notice dated 05.07.2020 is annexed herewith as **ANNEXURE P-11**. The said legal notice too was not responded to by the Respondent No. 2 University.
13. That it is submitted that the impugned decision dated 20.06.2020 has been taken without taking into consideration the interests of students and their families, majority of whom are still struggling to bring back their life on normal wheels after being substantially struck by sectoral

lay-offs, pay-cuts, non-disbursal of salary and a strained economy. The impugned decision has been passed without giving due regard to the disproportionate impact the lockdown had on livelihood of families of students. It is thus manifestly arbitrary and is hence, liable to be quashed.

14. That furthermore, the present requisition made by the Respondent No. 2 University for payment of such a hefty amount of fee of Rs. 1,13,500/- and 1,11,000/- (that too at such a short notice) forces parents and students to choose between basic essential commodities required to survive the pandemic versus effectively avail their Right to Uninterrupted Education. Despite having requisite funds to appropriate for the welfare of students, the Respondent No. 2 University is constantly manifesting its unwillingness to provide any adequate relief in this unprecedented hour of crisis.
15. That furthermore, absolutely no communication with the stakeholders such as the students was attempted on behalf of the Respondent No. 2 University. There was complete non-application of mind on part of the Respondent No. 2 University. The impugned decision taken by the University was a unilateral one, impinging upon the right to education of the Petitioners herein. It thus reeks of arbitrariness.
16. That furthermore, such chargeable fee is required to be paid by the students at a very short notice with the date of the notice being 27.06.2020 and the last date for payment without late fee being 10.7.2020, which only adds to their misery of the students, including the Petitioners herein.

Such undue haste further shows the arbitrariness and high handedness on part of the Respondent No. 2 University.

17. That the Respondent No. 2 University is clearly flouting the Rules laid down by the Bar Council of India with regard to dispensing legal education. Chapter II Rule 10 of the Rules of Legal Education, 2008 clearly states the following:

10. Semester System

“The course leading to either degree in law, unitary or on integrated double degree, shall be conducted in semester system in not less than 15 weeks for unitary degree course or not less than 18 weeks in double degree integrated course with not less than 30 class-hours per week including tutorials, moot room exercise and seminars provided there shall be at least 24 lecture hours per week.

Provided further that in case of specialized and/or honours law courses there shall be not less than 36 class-hours per week including seminar, moot court and tutorial classes and 30 minimum lecture hours per week.”

The Respondent No. 2 has hardly held any regular online classes in consonance to the required hours as per the Bar Council of India Norms for the previous semester (Feb-May) and moreover instead of adjusting the balance semester fee of the previous semester, the Respondent No. 2 is arbitrarily demanding full advance payment of fee for the upcoming semester (Aug-Dec). Further, there has been no circular or communication qua the details of the online classes purported to be held which shows that the said rules are being adhered to.

18. That it is hereby submitted that it is highly arbitrary, illegal and against the basic principles of equity and justice on part of the Respondent No. 2 University to charge fees for amenities and services such as Moot Court that have been

suspended in these times of COVID-19. Furthermore, the Hostel Fee being charged from the Petitioner students is in full and not a mere rental. It is worthwhile to mention here that due to non-occupation of hostel rooms, the Respondent No. 2 University is not incurring expenses on electricity, water and general upkeep and maintenance expenses. However, the Hostel Fee has not been adjusted to reflect such decrease in expenditure. To this end, the inflexible stand of the Respondent No. 2 University in charging fees for unutilized amenities simply reflects the attempt on part of the Respondent No. 2 University to profiteer at the cost of the students, including the Petitioners herein.

19. That at this stage, it is relevant to point out that the Respondent No. 2 University is a State-Funded University, which receives funds from Respondent No. 1. Its expenses are not entirely met out of the fee collected from the students. It is thus arbitrary on part of a State University to collect such exorbitant fee from the students in such times, without consulting the students at large.

20. That it is worthwhile to mention here that State of Punjab (Respondent No. 1 herein), through the Director Public Instructions (Secondary Education) has come out with a notification dated 14.05.2020 directing private un-aided schools not to charge any fees for the period of lockdown except tuition fee in case of schools providing the facility of online classes. The said notification, though applicable only for private un-aided schools, is applicable with equal strength, if not more, in case of the Respondent No. 2 University, which is neither private nor un-aided. The

Respondent No. 2 University is thus disregarding the policies issued by Respondent No. 1 itself, from whom it receives grants, by charging full fee for the upcoming semester. A copy of the notification dated 14.05.2020 is annexed herewith as **ANNEXURE P-12**.

21. That it is hereby submitted that this Hon'ble Court in the matter of **Independent School's Association Chandigarh (Regd.) & Ors. v. State of Punjab & Ors., CWP No. 7409 of 2020**, regarding fee relief in private educational institutions, held vide its judgement dated 30.07.2020 as under:

"The school management of each schools shall work out their actual expenditure incurred under the annual charges for the period the school remained closed and recover only such genuine expenditure incurred by them but shall not recover any charge for this period for any facility towards which no expenditure was incurred."

It is hereby submitted that the said judgement *ipso facto* applies to the case of the Petitioners. In the instant case, Respondent No. 2 University has not worked out its actual expenditure for the period it remained closed or has not shared the same with the students, including the Petitioners herein. It is thus recovering charges for facilities towards which no expenditure has been incurred. A copy of the said judgement dated 30.07.2020 is annexed herewith as **ANNEXURE P-13**.

22. That furthermore, the University Grants Commission ("UGC"), vide its notification dated 27.05.2020 has advised higher educational institutions to address the grievances

regarding fee payment in a considerate manner in the present time of crisis. The present acts of Respondent No. 2 University are clearly in blatant violation of the said UGC notification as no discussion whatsoever was held with various stakeholders namely students and parents before taking the impugned decision. Moreover, the high handedness of the Respondent No. 2 University is writ large its actions of not replying to any individual or collective mail or request of the students. The same clearly shows the intention of Respondent No. 2 University to not show any concerns towards grievances of students. A copy of the UGC notification dated 27.05.2020 is annexed herewith as **ANNEXURE P-14.**

23. That it is further submitted that shifting classes online leads to a situation where several opportunities cease to exist, and a student is only able to access a fraction of what he was offered initially. It strips the student the access to opportunities that a college had previously made available. Therefore, if only a fraction of the Respondent No. 2 University's services is available, the Respondent No. 2 University should only charge a fraction of the fee it was earlier charging. Not doing so makes the Respondent No. 2 University's actions as arbitrary, and thus, liable to be struck down.
24. That it can be understood that classes, library amenities and examinations are manageable digitally, but, where, for example, organization of mootings and allied activities seems difficult in light of the prevalent situation, charging 'Moot

Fee' seems highly unreasonable and arbitrary as there is no actual cost towards this head. Furthermore, in a situation where campus amenities like Gym/Health Centre cannot be utilized by the students, it is highly arbitrary on part of the Respondent No. 2 University to charge regular 'Amenities Fees' etc. without any reasonable deductions.

25. That it is pertinent to mention that the illegality can be severed in the present instance without any difficulty. The contractual obligations imposed on residential schools/colleges/universities clearly consists of several distinct promises relating to educational and residential facilities. The contractual obligations relating to residential facilities can be severed from those relating to education without affecting the substratum of the contract. It is seen that colleges and schools themselves divide fees taken into categories such as residential fees, educational fees, amenities fees, campus development fee etc. as **Annexure P-8** clearly manifests.
26. That furthermore, due to the premature closure of campus w.e.f. 14.03.2020 and the subsequent declaration of summer vacations, a major portion of fees already paid for the Summer Semester (February-May 2020) remains unutilized. Thereafter, the requisition of a hefty amount of Rs. 1,13,500/- vide the impugned notice with little to no relaxation and no adjustment of the funds of the Summer Semester lying unutilised, is highly arbitrary. The Minutes of the Finance Committee Meeting of the Respondent No. 2 University dated 20.06.2020 (**Annexure P-6**) clearly show

that a sum of Rs. 214.67 lakhs is lying unspent from the financial year 2019-20. The same can be utilised in reducing the fee payable for the upcoming semester, which the Respondent No. 2 University, for reasons best known to it, has failed to do.

27. That furthermore, as per newspaper reports fixed deposits worth Rs. 48 Crores have been reported to be available at the disposal of the Respondent No. 2 University. Copy of one such newspaper report dated 23.05.2020 is annexed herewith as **ANNEXURE P-15**.
28. That moreover, to add insult to injury, the Respondent No. 2 University has decided to charge exorbitant late fees if requisite hefty payments are not made by the 10th July as the fee schedule set out in **Annexure P-8** shows.
29. That it is hereby reiterated that the prevalent situation today undoubtedly warrants from the Respondent No. 2 University special considerations and appropriate relaxations in genuine cases and circumstances. However, the Respondent No. 2 University despite requests, both individual and collective, over phone and through e-mails, has failed to redress the grave situation that has arisen therefrom.
30. That the Respondent No. 2 University's insistence on charging such an exorbitant amount of fees from the impacted students, including the Petitioners herein, in such testing times infringes upon their right to access education.

31. That the following questions of law are involved in the present petition for the kind consideration of this Hon'ble Court: -
- i) Whether in the facts and circumstances of this case, the Respondent No. 2 University has acted arbitrarily in charging full fee from the students?
 - ii) Whether in the facts and circumstances of this case, the Respondent No. 2 has acted arbitrarily in seeking to profiteer at the expense of the students?
 - iii) Whether in the facts and circumstances of this case the respondent university has acted against the Bar Council of India, Rules of Legal Education, 2008?
 - iv) Whether in the facts and circumstances of the case, the Respondent No. 2 has acted in derogation of settled law and UGC instructions?
 - v) Whether Respondent No. 1 has failed to discharge its duties as an authority by not taking any action qua the blatant disregard of rules and functions by Respondent No. 2 as it is a Government Funded institution?
32. That the Petitioners have not filed any other such or similar writ petition in this Hon'ble Court or in the Hon'ble Supreme Court of India. No such or similar writ petition is pending adjudication before any competent court of law.
33. That the Petitioners have been left with no other statutory remedy by way of an appeal or revision except to invoke the extra-ordinary writ jurisdiction of this Hon'ble Court under Articles 226/227 of the Constitution of India.

PRAYER

It is therefore, respectfully prayed that this Hon'ble Court may kindly be pleased to:

- I) issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 20.06.2020 (Annexure P-6) vide which no relief has been granted in lieu of the semester fees and subsequent notice dated 27.06.2020 (Annexure P-7) asking for advance payment in full amounting to Rs. 1,13,500/- for the upcoming semester (August-December) & imposing exorbitant fine on delay of payment of such fee;
- II) Issue a writ in the nature of *mandamus* directing Respondents to charge only that amount of fee from students for the upcoming semester (august-december 2020), in lieu of which expenditure is actually being incurred by the Respondent No. 2 and can be accounted for;
- III) Issue a writ in the nature of *mandamus* directing the Respondents to adjust the unutilized portion of fees charged for the summer semester (February-May 2020), towards the upcoming semester (August-December 2020);
- IV) With a further prayer that pending disposal of the instant writ petition, the operation and effect of the impugned notice dated 27.06.2020 (Annexure P-7) may kindly be stayed in the interests of justice;
- V) Issue any other appropriate writ, order or directions which this Hon'ble Court may deem fit in the facts and circumstances of the present case;
- VI) Dispense with the filing of the true typed copies/ certified copies and photocopies of annexures attached to the present writ petition;
- VII) Award costs of the writ petition, if any, in favour of the petitioners and against the respondents.

CHANDIGARH
Dated:-

Petitioners

through

ADVOCATES
Counsels for the Petitioners

Verification:

Verified that the contents of Paragraph Nos. 1 to and to of the Writ Petition are true and correct to my knowledge and those of para No. are believed to be true and correct as per legal advice given by the counsel. No part of it is false and nothing material has been concealed therein.

CHANDIGARH
Dated:-

Petitioners