

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL APPLICATION NO. 1073 OF 2016
IN
WRIT PETITION NO. 11655 OF 2013

Anupam Amirto Biswas ... Applicant

In the matter between:

Anupam Amirto Biswas ... Petitioner

Vs

1. The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION NO. 11655 OF 2013

Anupam Amirto Biswas ... Petitioner

Vs

1. The State of Maharashtra & Ors. ... Respondents

Mr. Vaibhav R. Gaikwad for the Applicant / Petitioner.

Ms. Sushma Bhende, AGP, for the Respondent No.1.

Mr. A.M. Kulkarni for the Respondent Nos.2 and 3.

Mr. Rajshekhar V. Govilkar for the Respondent No.4.

Mr. Sameer P. Khedekar for the Respondent No.5.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKARJOSHI, JJ.**

WEDNESDAY, 15TH JUNE, 2016

P.C. :

1. On 30th March, 2016, this writ petition was placed before a Division Bench to which one of us (S.C. Dharmadhikari, J.) was a party.

2. We had noted on that day that the petitioner and the advocate were absent.

3. A detailed order was passed vacating the ad-interim relief and dismissing the petition. This is an application for restoration.

4. Since this petition concerns the academic career of a student, we heard the petitioner's advocate on this Civil Application extensively. We once again considered the matter in its entirety. Since the petitioner's advocate earlier could not remain present on account of a personal difficulty, with a view not to cause any prejudice to the petitioner and as he is a student, we heard the applicant's/original petitioner's advocate again.

5. We have noted on a petition of this nature, this Court was persuaded on 12th March, 2014, to pass an ad-interim order. That was on the footing that though the petitioner initially sought admission against a reserved seat, meant for scheduled caste, later on, for non compliance of the requirement to produce a caste validity certificate that admission could not have been protected. The petitioner, therefore, turned around and stated that there are some seats vacant in open category and, therefore, he should be treated as an open category candidate. This Court, after hearing all parties, passed an order recording that the petitioner's application could never have been entertained as against a reserved seat. Meaning thereby, he could not have been admitted against a reserved seat. However, finding that there was some reason for the delay and for which the petitioner is not to be blamed or held responsible, the petitioner's admission was directed to be treated as against an open seat. That was on the footing that two open category seats were vacant at the relevant time. A detailed order was passed and the entire order would indicate as to how it came to be passed on the eve of an examination. The course to which the petitioner sought

admission was First Year Bachelor Degree of Homeopathy Medicine (BHMS). The examination was scheduled to be held from 27th May, 2014 and the Division Bench order is dated 12th March, 2014. Accordingly, the petitioner was granted a hall-ticket and permitted to take this examination.

6. Later on, on the petitioner's request to declare the results of the said examination / appearance was also considered and prior to the next academic year. It is on this footing that the petitioner's admission was continued.

7. The direction to declare the results came to be issued on 23rd July, 2014, and it is admitted that the petitioner failed at the said examination.

8. However, considering that the petitioner was admitted by virtue of an ad-interim order passed by this Court, he treated this as a clear permission to continue the studies for the said Bachelor's course. He was of the view that his admission cannot be interfered with even if he fails at successive attempts to clear this examination. Proceeding on the footing that there is

no outer limit and he can go on appearing even if he fails in this examination, the petitioner is urging that his admission being protected and now another examination is scheduled from 21st June, 2016, that this Court should consider granting an equitable and discretionary relief.

9. After we have noted the attempts of such petitioners and who take this Court for a ride time and again, we are disinclined to consider this request. Though the petitioner's advocate tried to persuade us and for quite some time in order to protect an academic career of a student, what we have found is pursuant to the ad-interim order passed by this Court, the petitioner has taken more than one attempt, but failed to clear the examination. We cannot block a seat like this and when there is another common entrance test for admissions to all the medical, dental, homeopathic and other courses. The meritorious students are waiting to be admitted based on their merit. Their academic excellence cannot be punished by depriving them of the seats whether in open category or otherwise by a licence to the students like the petitioner to hold on to their admissions. This makes complete mockery of the academic standards. This Court's

order cannot be held to be diluting them nor directing a compromise with the same. There is a limit for the assistance rendered to the candidates like the petitioner. There is a discretionary order but confined to appearance at one examination based on which the reliefs as noted above are sought. Surely this Court, when it passed the order on 12th March, 2014, never intended to chart this course and for a student like the petitioner. If he is academically unable to cope up with the studies and is not geared up for the same despite repeated appearances to clear one examination, then, in our opinion he does not deserve to be a candidate for the Homeopathic medicine course. Let other deserving candidates be given an opportunity. This Court's orders and passed in its discretionary and equitable jurisdiction does not create a vested right and as is now claimed. Merely because there is no outer limit for appearances at examinations, we cannot allow the process of this Court to be abused in the manner suggested. The writ petition, though restored to file, but finding that it is devoid of any merits, it is dismissed.

10. Only on account of the persuavive ability of the

petitioner's advocate and without creating a precedent, we vacate that part of the direction in our earlier order by which the petitioner could have been prosecuted for bringing a false claim or case. We delete that direction.

DR.SHALINI PHANSALKAR-JOSHI, J. S.C. DHARMADHIKARI, J.