

IN THE HIGH COURT OF JUDICATURE AT BOMBAYNAGPUR BENCH : NAGPUR**WRIT PETITION NO. 5952 OF 2016.****(Prital Dilip Gupta .vs. The State of Maharashtra & others)**

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. S.P. Bhandarkar, Advocate for petitioner,
Mr. D.P. Thakare, Addl. G.P. for respondent nos. 1 to 3 & 5.
Mr. A.A. Naik, Advocate for respondent no.4.

CORAM : B.R. GAVAI & V.M. DESHPANDE, JJ.

DATED : OCTOBER 27, 2016.

The petitioner herein was admitted in respondent No.4 college. Respondent No. 4 is a private medical college. However, in the last round of admission now the petitioner is selected for admission in respondent no.5. However, since on account of the original documents which were with the respondent no.4, the petitioner could not get admission in the respondent no.5 college, the petitioner has approached this Court.

Vide ad-interim order dated 14.10.2016 we had directed the original documents to be handed over to the petitioner.

Shri A.A. Naik, the learned Counsel for the respondent no.4, submits that on account of the subsequent rounds of admission and that too only to the Government Medical Colleges which were upto 7th October, a precarious situation has arisen. He submits that the fees per student have been worked out by

the Shikshan Shulka Samiti on the basis of the sanctioned strength of the respondent no.4. He, however, submits that if some of the students are permitted to leave the respondent no.4, the revenue generated by the respondent no.4 would fall short by the amount determined by the Shikshan Shulka Samiti multiplied by the number of students leaving the said college. He, therefore, submits that if the documents are to be permitted to be withdrawn by the petitioner, the same shall only be subject to the entire fees to be deposited by the petitioner.

The learned Counsel in the alternative submits that if this Court is not inclined to issue the directions as aforesaid, the respondent no.4 should be permitted to fill in the post by the other candidates which are available.

Civil Application No. 2381/16 is also filed by one Sabahat Samreen d/o Mushir Ahsan Parvez claiming for a direction to admit her in a seat that may fall vacant on account of the petitioner taking admission in the respondent no.5 college.

A student who is admitted in a Government Medical College and who will have to pay much less fees as compared to the fees chargeable by the private medical college cannot be compelled to continue in the respondent no.4 college. At the same time, we find that if a student is made liable to pay the entire fees for five years, it would amount to giving an unjust treatment to a meritorious student who has been admitted in Government Medical College.

Equally, we find that the difficulty as expressed by the learned Counsel for the respondent no.4 is genuine. Undisputedly, with the shortfall of the students than the sanctioned strength, the generation of the revenue would be

affected. In such a situation, we would have considered permitting the respondent no.4 to admit student who is desirous of getting admission. This would have saved one seat going waste.

However, in view of the law laid down by Their Lordships of the Apex Court in the case of **Medical Council of India .vs. Madhusingh & others reported in 2002 (7) SCC 258,** wherein Their Lordships have held that even if seats are unfulfilled, that cannot be a ground for permitting mid-session admissions. Therefore, we would not be in a position to permit the respondent no.4 to admit the intervenor.

In that view of the matter, we find that the petition deserves to be allowed in terms of prayer clause (b) and the same is allowed. Rule is made absolute in terms of prayer clause (b). The respondent no.4 has already returned the original documents to the petitioner. In so far as the fees deposited by the petitioner are concerned, the same shall be returned within a period of four weeks from today.

However, taking into consideration the peculiar facts and circumstances, we direct the Shikshan Shulka Samiti to reconsider the fees payable by the students in the respondent no.4 college on the basis of actual number of students taking admission in the said college, instead of sanctioned strength.

Judge

Judge

J.