

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 20386 of 2003
Date of decision: 18.10.2016

Imaan Preet Kaur Nijjer

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: None for the petitioner.

Ms. Lavanya Paul, AAG, Punjab.

Mr. Kamaal Singh Dhillon, Advocate,
for respondent no. 4.

Mr. Gaurav Singla, Advocate,
for respondent no. 5.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks refund of US \$ 40,000, which was paid as admission fee for the Ist year MBBS course in October, 2002. A further direction has been sought not to freeze the amount of US \$ 35,000 deposited as bank guarantee dated 28.10.2002.

The pleaded case of the petitioner is that she is an NRI and a permanent resident of Vancouver, Canada and had taken admission against the NRI seats in August, 2002. The time for depositing the money had been extended upto 18.10.2002 vide letter dated 20.09.2002 (Annexure P-2) and the petitioner had been asked to deposit US \$ 40,000/- as registration fees and to furnish by way of bank guarantee for the IInd year and IIIrd year to an amount of US \$17,500 each. Resultantly, she had deposited the said

amount on 17.10.2002 and furnished the bank guarantee vide receipt dated 17.10.2002. She had attended classes but was not allowed to appear in the examination by the respondent-university because of her late admission. She had approached this Court in CWP No. 9333 of 2003 and was provisionally allowed to appear in the said exam vide order dated 20.06.2003. On account of the ad hoc arrangement and the uncertainty created, it led to a loss of one year and the respondents were seeking to encash the bank guarantee as such. Resultantly, this Court was approached.

Respondents no. 1, 2 and 3, in their reply, submitted that out of the fees for the course of US \$ 75,000, the first instalment of US \$ 40,000 had been deposited whereas, the balance was deposited by way of two equal instalments by way of bank guarantee. She had been asked to deposit the fees by 30.09.2002 which she did not and she was allowed extension till 18.10.2002. She was not allowed to appear in the exam in July, 2003 by the respondent-university and thereafter, she had been allowed to appear in view of the interim orders. Classes had been held as per schedule and extra classes were held to complete the syllabus. The petitioner had not completed one year study and for this reason, the respondent-university had not allowed the petitioner to appear in the university examination. It is further averred that the first bank guarantee had been encashed on 17.10.2003. The authorities had no objection if she wanted to study in the course as per Rules.

A perusal of the written statement filed by the bank would show that the first bank guarantee was encashed on 17.10.2003 (Annexure R-5/5). None has put in appearance on behalf of the petitioners even though the case was taken up yesterday and request for adjournment was made.

On 26.02.2015, the counsel for the petitioner had taken time whether the petitioner had been admitted to 2nd semester to merit encashment of bank guarantee for the tuition fee for the 2nd semester. No information qua the same has been furnished. However, a perusal of the orders passed in CWP No. 9333 of 2003 on 19.12.2008 filed by the petitioner and another would go on to show that the petitioner had been permitted to sit in the classes of the 2nd professional also. However, it was noticed that the petitioner had left the degree course mid-stream and accordingly, the petition qua her was dismissed. The relevant portion of the orders read thus:-

“In this civil writ petition, the two petitioners (Imaan Preet Kaur Nijjer and Maniver Kaur) seek a direction to respondent No.2 – Baba Farid University of Health Sciences (in short ‘the University’) to issue roll numbers and allow them to appear in the 1st Professional M.B.B.S. examination.

The petitioners are NRIs who got admission in M.B.B.S. course in the Government Medical College, Patiala against NRI quota. As they were not issued roll numbers to appear in the 1st Professional M.B.B.S. examination due to shortage of lectures, the petitioners have approached this Court.

When this writ petition came up for motion hearing on June 20, 2003, a Division Bench of this Court passed the following order:-

“Notice of motion to the respondents for 14-7-2003. Process dasti only.

In the meantime, the petitioners shall be allowed to appear in the examination of Ist year of M.B.B.S. course to be held from 27-6-2003 provisionally subject to the decision of

the writ petition. The result of the petitioners shall not be declared before the decision of the petition or without the permission of the Court. The appearance of the petitioners in the examination by virtue of this order will not create any equitable right in their favour.

Copy of the order be given dasti on usual charges.”

Thereafter, on October 20, 2003, following order was passed.

“Heard counsel for the parties.

In spite of repeated adjournments, no written statement has been filed by respondent No.2/University. In the interest of justice, the respondents are directed to declare the result of the petitioner in M.B.B.S. Ist Professional. In the event, the petitioners are declared passed, they be permitted to sit in the classes of IInd professional. In case the petitioners are declared fail in any particular subject, they be permitted to sit in the Supplementary examinations in accordance with the rules.

Adjourned to 15th January, 2004.

A copy of this order be given dasti to learned counsel duly authenticated under the signatures of Bench Secretary of this Court.”

On 23-1-2004, the Division Bench passed the following order:-

“After hearing learned counsel for the parties for some time, we direct Baba Farid University of Health Sciences, Faridkot to declare the result of the supplementary examination which the petitioner had taken in the month of December, 2003. If the result

of other candidates has not been declared so far, then the result of the petitioner shall be declared along with those candidates, else her result be declared within 7 days from today.

Put up on 9-2-2004.”

While admitting the writ petition on February 12, 2004, the Division Bench passed yet another interim order in the following terms:-

“Heard learned counsel for the parties and perused the record.

Admit.

In continuation of interim order dated 20-10-2003, we direct that petitioner No.2 be allowed to take the re-appear examination in the Paper of Anatomy.

Copy of the order be given dasti on payment of fees prescribed for urgent application.”

On August 30, 2004, the University was further directed to declare the result of applicant-petitioner No.2 of the supplementary examination in the paper of Anatomy of Ist Professional. Vide another interim order dated November 18, 2005, petitioner No.2 was permitted to appear in the 2nd Professional M.B.B.S. Examination which commenced on 29th November, 2005. The result of the said examination was then directed to be declared vide another interim order dated January 31, 2006.

It is the conceded position that petitioner No.1 left the degree course midstream and as such, the writ petition qua her is liable to be dismissed. Ordered accordingly.”

Resultantly, it is apparent that the petitioner cannot now turn around and say that she is entitled for the refund of the fees as she had taken

admission in the 2nd professional also but, as noticed, opted to leave the degree course mid-stream for reasons best known to her. The NRI seat has gone vacant depriving the respondent of the full fees which it would be entitled to charge from any candidate who would have opted to stay on.

In such circumstances, no directions can be issued for the refund of the fees and accordingly, the writ petition is dismissed.

18.10.2016
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(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No