

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

CWP No. 3820 of 2008
Date of decision: 17.10.2016

Manali Khurana

....Petitioner(s)

Versus

MDU and others

...Respondent(s)

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

Present: None for the petitioner.

Ms. Amrita Nagpal, Advocate,
for Mr. Shireesh Gupta, Advocate,
for respondent no. 1.

Mr. Gaurav Gaur, Advocate,
for Mr. Ashwani Talwar, Advocate,
for respondent no. 2.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks refund of the fees for the session 2007-08 submitted with respondent no. 2-college at the time of taking provisional admission in the course of BDS course. Prayer has also been made for release of the original documents of the petitioner on the ground that the petitioner had withdrawn from the said college and, therefore, the illegal demand of the payment of the fees for the entire BDS course was not sustainable.

Vide order dated 13.03.2008 while issuing notice of motion, the Division Bench had directed the Chairman of respondent no. 2-institution to be present in Court in person alongwith all the documents of the petitioner on the date fixed. It is the case of the petitioner, as noticed in the above said

order, that she had submitted an application on 27.09.2007 i.e. three days before the cut off date i.e. 30.09.2007 that she had got admission in the MBBS course in the Krishna Institute of Medical Sciences, a Deemed University at Karad Maharashtra. Therefore, the fees deposited be refunded back to her and the original documents be handed over. In pursuance of the above said order, on 20.03.2008, the matriculation certificate, 10+2 marks card, character certificate and the PMT certificate were handed over. A transfer certificate had been forwarded to the university which was to be returned to the petitioner. Thereafter, vide order dated 28.04.2008, it was left open to the petitioner to apply for the migration certificate before respondent no. 2. Resultantly, it is apparent that the only dispute which remains pertains to the refund of the fees on account of the fact that the petitioner had allegedly opted out before the cut of date.

A perusal of the Annexures would, however, go on to show that apart from a postal receipt dated 27.09.2007 (Annexure P-5) addressed to respondent no. 2-college, there is nothing on record to show that any such application was made, as has been alleged. It is the categorical case of the respondent-college that the petitioner had attended classes till 29.09.2007 and photocopies of the attendance registers have also been appended as Annexure R-2/6 to show that the petitioner was attending classes till 29.09.2007. It has been further averred that 30.09.2007 was a holiday being a Sunday.

It is the categorical case of the respondents that the seat vacated by the petitioner had not been filled up and the respondent-institute had suffered a financial loss and the petitioner was not entitled for the refund.

In fact, the respondent was staking claim for the entire fees for the course of

4 years and reserved its right to take appropriate steps. The prospectus was further relied upon to submit that there was no provision for refund. The case of the respondent is that if the petitioner had informed the respondents, they would have admitted another student in her place. On account of her leaving without any permission, the seat had got vacant and, therefore, financial loss had been suffered.

Thus, the stand of respondent no. 2 is very clear that the alleged letter dated 29.09.2007 sent through post under UPC had never been received. It also attached its register (Annexure R-2/6), which showed the letters which had been received by the respondent-institute around that time. It is also on record that before the petitioner had served legal notice dated 24.12.2007 (Annexure P-7) the respondent-institute had already sent a letter dated 07.12.2007 (Annexure P-8) that the petitioner had remained absent and she had taken admission in MBBS course in the Krishna Institute of Medical Sciences, a Deemed University at Karad Maharashtra and could not be registered with two different universities. It is thus apparent that thereafter, the legal notice dated 24.12.2007 (Annexure P-7) was addressed, in which, for the first time the petitioner came up with the alleged communication dated 27.09.2007 on the basis of which a claim is raised that she intimated the respondent-institute that she had sought to leave with permission. Thus, no reliance as such can be placed upon the alleged intimation sent to respondent no. 2 regarding the college being intimated that the petitioner was leaving before the cut off date. Sufficient material has also been placed on record to show that the petitioner attended classes till 29.09.2007 and, therefore, the falsity of the alleged communication dated 27.09.2007 gets further exposed.

In such circumstances, this Court is of the opinion that there is no basis on which the petitioner is entitled for the refund of the fees for the first year. The prospectus rather goes on to show that fees once paid shall not be refunded which would be clear from clause (ii) under General Information which reads thus:-

“(ii) Fees once deposited shall not be refunded under any circumstances and no correspondence will be entertained.”

Clause (ii) of the General Rules also shows to the same effect which reads thus:-

“(ii) Fees once paid shall not be refunded under any circumstances even in case of migration/transfer the refundable securities will be refunded if claimed with in one year. No correspondence will be entertained on this account.”

The reliance upon Annexure P-11 in the facts and circumstances, which are instructions of the Union of India, also would be of no consequence as the same would be only applicable if the seat consequently falls vacant and is filled up by the candidate before the last date of admission.

It was in such circumstances, the institute was to return the fees. As noticed above, it is the categorical case of the respondents that the seat has gone waste on account of the non-communication by the petitioner and in fact notice had been issued on 07.12.2007 to attend classes. In such circumstances, no case is made out for the refund of the fees. As noticed, the relief qua the return of documents has already been granted vide the interim orders.

Accordingly, the present writ petition is dismissed.

17.10.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No